



OFFICE OF  
MAYOR WILLIE L. BROWN, JR.



SEXUAL HARASSMENT IN THE WORKPLACE  
UPDATE 1998

JULY 22, 1998  
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# **SEXUAL HARASSMENT IN THE WORKPLACE UPDATE 1998**

**JULY 22, 1998**

**CONDUCTED BY  
OFFICE OF CITY ATTORNEY  
DEPARTMENT OF HUMAN RESOURCES  
COMMISSION ON THE STATUS OF WOMEN**

## **PROGRAM**

**9:00 – 9:30**

### **SIGN-IN**

**9:30**

### **OPENING REMARKS**

Andrea Gourdine, Executive Director,  
Department of Human Resources

City Attorney Louise Renne

Mayor Willie Brown

### **LEGAL UPDATE**

Linda Ross, Deputy City Attorney

### **DEPARTMENT OF HUMAN RESOURCES PROCEDURES UPDATE**

Dorothy Yee

Acting Manager, EEO Programs

**10:15**

### **PANEL DISCUSSION**

Sonia Melara, Panel Moderator

Director, Commission on the Status of Women

Mark Primeau

Director, Department of Public Works

Emilio Cruz  
Director, Department of Public Transportation

Kate Favetti  
Executive Officer,  
Civil Service Commission

Will Lightbourne  
Executive Director,  
Department of Human Services

11:00

**ROLE PLAYS**  
**Office of City Attorney**

Vicki Clayton, Moderator  
Deputy City Attorney

**Vignettes:**

(In)Appropriate Management Response

Aggressive Manager

Office Soap Opera

Outside Harasser

Manager Observation



## ***SPEAKERS AND PANELISTS***

VICKI A. CLAYTON, Chief Labor Attorney  
City Attorney's Office

Vicki Clayton has served the City and County of San Francisco for over 15 years. After receiving her Juris Doctor from the University of San Francisco, she joined the City Attorney's Office as a Deputy City Attorney. She has served as General Counsel to the Civil Service Commission and the Human Resources Director since 1989 and was appointed Chief Labor Attorney in 1994. Vicki is a member of the Sexual Harassment Task Force of the City and County of San Francisco.

EMILIO R. CRUZ, Director  
Public Transportation Department

Emilio Cruz has served the City and County of San Francisco for over eight years after receiving his degree in Civil Engineering from Stanford University. Emilio began his service for the City as a Civil Engineer with the Department of Public Works, then as Capital Project Director for the Chief Administrative Officer and as Director of Facilities and Operations at the Port of San Francisco. After serving as Chief of Staff for Mayor Willie L. Brown, Jr., the Mayor appointed Emilio Director of the Public Transportation Department in July 1996. Emilio received the Public Managerial Excellence Award from the Mayor's Fiscal Advisory Committee in 1994. He has also been recognized with numerous awards for his community involvement working with at-risk children.

KATE FAVETTI, Executive Officer  
Civil Service Commission

Kate Favetti was appointed Executive Officer of the Civil Service Commission in March 1998. Kate has served the City and County of San Francisco for over 25 years with the Department of Public Health, Municipal Railway and the Civil Service Commission. She has had extensive experience in all aspects of personnel, human resource management, and employee/labor relations and is the

first woman in over 50 years to head the Civil Service Commission. Kate is the former President of the Council of Human Resource Managers and is well regarded by both managers and employee organizations alike. She is active with the Parent Teacher's Association (PTA) and currently serves as President of the Parent Teacher Student Organization at Abraham Lincoln High School. Kate is a member of the Sexual Harassment Task Force of the City and County of San Francisco.

EDWIN M. LEE, Director  
Purchasing Department

An attorney, Ed Lee has worked successfully in equal opportunity, anti-discrimination, and civil rights cases. Prior to joining the City, Ed served as Managing Attorney with Asian Law Caucus, Director at the Housing Law Project, Legal Advisor for the Asian American Federation of Union Members, and Legal Advisor for the Chinatown Coalition for Better Housing. For the City, he was Advisor on the City's Minority/Woman/Locally owned Business Enterprise (MBE/WBE/LBE) Ordinance; Deputy Director, Employee Relations Division, and Chief Investigator of the City's Whistleblower Program. As Director of the Human Rights Commission, he increased the City contract awards to women-owned and minority-owned local businesses from \$11 million to \$118 million within a 4-year period, received grant funding to protect tenants against private market housing discrimination, issued a study of discrimination faced by transgendered persons which led to The City's first ordinance protecting transgendered persons from discrimination. As Director of Purchasing, Ed organized and sponsored the City's first Minority Business Village Conference to promote MBE, WBE opportunities and utilization.

WILL LIGHTBOURNE, Executive Director  
Department of Human Services

Will Lightbourne was appointed Executive Director of the Department of Human Services in January 1997, by Mayor Willie L. Brown, Jr. The Department is responsible for operating public social services for children and adults, public assistance programs and services for low income people, and for the development of San Francisco's workforce development system. Prior to coming to the City,

Will served for seven years as Administrator of the Human Resources Agency (HRA) of the County of Santa Cruz. He also served as president of the Santa Cruz County Community Housing Corporation. Will previously worked with Catholic Charities of the Archdiocese of San Francisco, serving six years as General Director/CEO. He serves on the boards of a variety of community agencies and has taught social policy in the School of Social Work at San Francisco State University.

**SONIA MELARA, Executive Director  
Commission on the Status of Women**

Sonia Melara has served as Executive Director of the Commission on the Status of Women since her appointment in November 1994. Sonia has spent over 10 years in her own successful private marketing business. In 1984, she founded the Hispanic Yellow Pages following a career that included over ten years of broad management experience in the private and public sectors. She has served as National Director of Leadership Programs for the Mexican American Legal Defense and Education Fund (MALDEF). Sonia lectures on subjects relating to women's issues, leadership development, marketing, business and organizational development for profit and non-profit organizations. She has served on numerous boards and commissions and is co-founder of La Casa de Las Madres, the first shelter for victims of domestic violence in California. Sonia is a member of the Sexual Harassment Task Force of the City and County of San Francisco.

**MARK PRIMEAU, Director  
Department of Public Works**

Appointed by Mayor Willie L. Brown Jr. as Director of the Department of Public Works, Mark Primeau heads the department that provides the physical structures and services essential to the social and economic development of San Francisco. The Department plans, designs and manages construction of most public projects, regulates use of City streets, removes graffiti, plants and maintains City-owned trees, cleans streets and repairs potholes. Mark has the vision that puts the Department's mission and multicultural project teams in direct contact with neighborhoods and residents to ensure that quality services are provided. Since joining the City in 1985, Mark has been instrumental in the success of various



projects including the Earthquake Safety Program. He is active in community-based projects in his neighborhood and throughout the City contributing his architectural and planning expertise.

LINDA M. ROSS, Deputy City Attorney  
City Attorney's Office

Linda M. Ross has been a Deputy City Attorney for the last six years. She practices in the area of civil litigation and defends the City in wide range cases, including civil rights, employment discrimination, public sector employment, and labor relations. For four years, she was the chief legal advisor to the San Francisco Police Department and the San Francisco Police Commission. For the past few years, she has concentrated on employment cases, including cases involving harassment, discrimination and retaliation. Linda is a graduate of Boalt Hall School of Law at the University of California at Berkeley. She began her legal career as a clerk to the Honorable Alfonso J. Zirpoli, United States District Court Judge. She was in private practice before coming to the City Attorney's Office. Linda is a member of the Sexual Harassment Task Force of the City and County of San Francisco.

DOROTHY YEE, Acting Manager, Equal Employment Opportunity Programs  
Department of Human Resources

Dorothy Yee has over twenty years of experience developing and implementing equal employment opportunity and affirmative action programs in the City and County of San Francisco. She manages the Department of Human Resources, Equal Employment Opportunity Division. Dorothy provides technical assistance in the areas of employment discrimination complaints, sexual harassment charges, the Americans with Disabilities Act (ADA), reasonable accommodations, and workplace diversity. Dorothy is a member of the Sexual Harassment Task Force of the City and County of San Francisco.



# **SEXUAL HARASSMENT TASK FORCE**

**The Sexual Harassment Task Force was established by  
Mayor Willie Brown as follows:**

**The Honorable Louise H. Renne, City Attorney  
Chair**

**The Honorable Barbara Kaufman  
President, Board of Supervisors**

**The Honorable Susan Leal  
Treasurer**

**John Taylor, Clerk of the Board  
Board of Supervisors**

**Kate Favetti, Executive Director  
Civil Service Commission**

**Sonia Melara, Executive Director  
Commission on the Status of Women**

**Andrea Gourdine, Executive Director  
Department of Human Resources**

**Deputy Chief Mindy Pengel  
San Francisco Police Department, SFO**

**Kandace Bender, Press Secretary  
Mayor's Office**

**Naomi Weinstein, Mayor's Office  
Neighborhood Services**

**Vicki Clayton, Deputy City Attorney  
Office of City Attorney**

**Linda Ross, Deputy City Attorney  
Office of City Attorney**

**Gail Stein, Assistant  
Supervisor Barbara Kaufman**

**Ann Lehman, Employment Specialist  
Commission on the Status of Women**

**Dorothy Yee, Acting Manager of EEO  
Department of Human Resources**

*This program was sponsored by Mayor Willie Brown, Jr. and the Sexual Harassment Task Force. We wish to express our appreciation to the following people who helped make this program possible:*

Vicki Clayton, Office of City Attorney  
Linda Ross, Office of City Attorney  
Catherine Valdez, Office of City Attorney

Andrea Gourdine, Department of Human Resources  
Dorothy Yee, Department of Human Resources  
Esther Leong, Department of Human Resources

Kate Favetti, Civil Service Commission  
Anita Sanchez, Civil Service Commission

Sonia Melara, Commission on the Status of Women  
Ann Lehman, Commission on the Status of Women

Mark Primeau, Department of Public Works  
Emilo Cruz, Department of Public Transportation  
Will Lightbourne, Department of Human Services

Alexander Clemens, Office of City Attorney  
David Schwabi, Main Library

Role Play Actors – Office of City Attorney

Alexander Clemens  
Cheryl Adams  
John Cooper  
Ellen Forman  
Joseph Sandoval  
Catherine Valdez





**SEXUAL HARASSMENT**  
**HANDBOOK**





## TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. SOURCES OF LAW	2
III. SUMMARY OF THE RULES	3
A. The Conduct Must Be "Unwelcome"	4
B. Three Types of Sexual Harassment	6
C. "Quid Pro Quo Sexual" Harassment	7
D. Hostile Work Environment	8
E. Retaliation	10
F. General Rules	12
1. Both Men and Women are Protected	12
2. Conduct Must Be Sexual in Nature or Directed at Someone Because of His or Her Gender	12
3. The "Reasonable Person" Standard	13
4. Psychological Injury Not Required	13
5. Weight of the Evidentce in Harassment Cases	14
6. Harassment Need not Affect a Term, Condition or Privilege of Employment	14
7. Remedies and Damages for Harassment	15

# TABLE OF CONTENTS

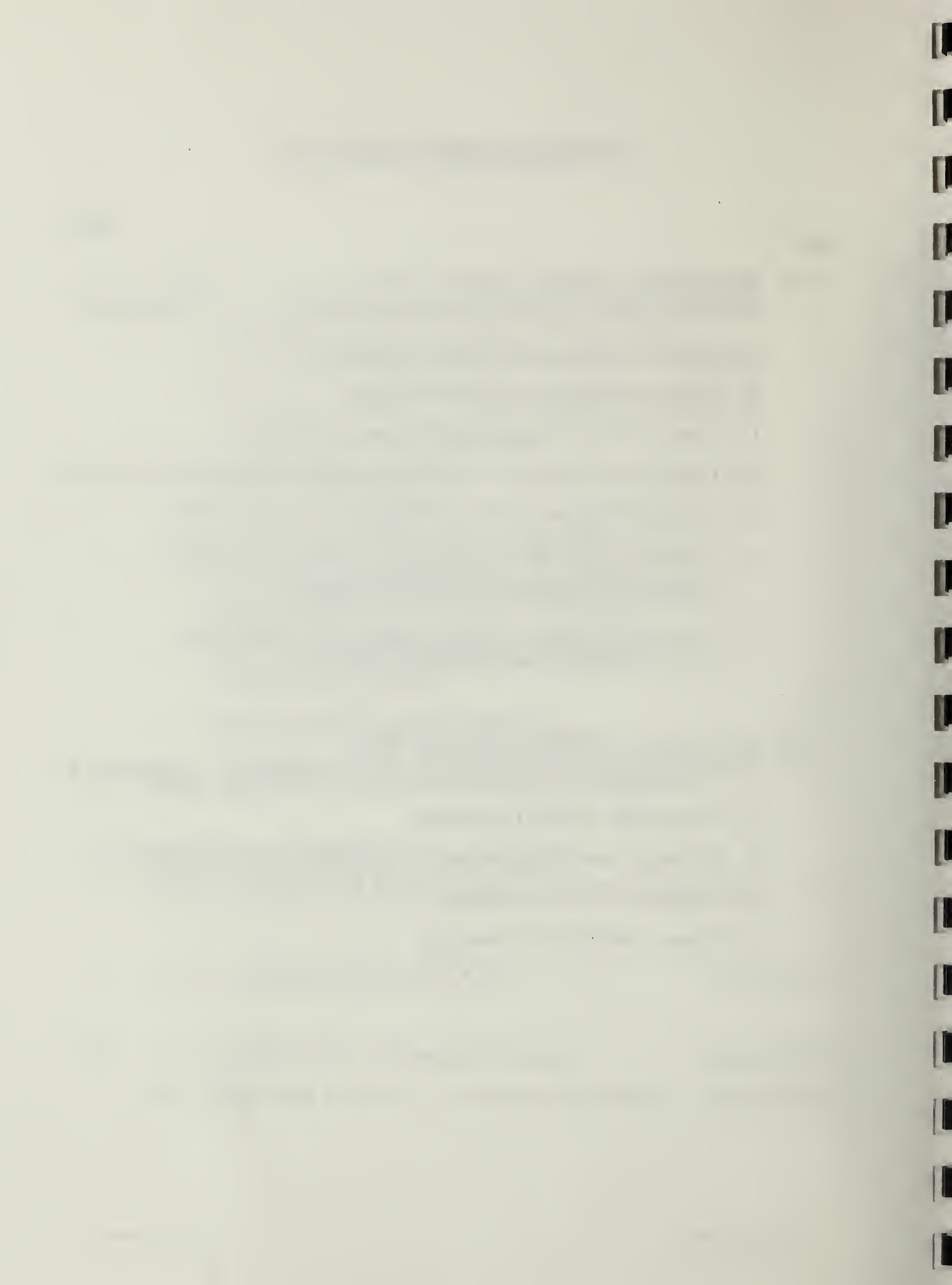
	<b>Page</b>
G. Liability	16
1. Employer Liability for Supervisors' Actions	16
2. Employer Liability for Fellow Employees' Actions	17
3. Employer Liability for Non-Employees' Actions	17
4. Individual Employee Liability	18
5. Liability Summary	18
H. Steps to Limit Legal Exposure to Harassment Claims	20
1. Adopt an Effective Policy Against Harassment, Disseminate it, and Re-Issue it Regularly	21
2. Make Sure Your Department has a Clear Complaint Procedure	22
3. Educate and Train all Employees	22
I. Summary of the Key Rules Regarding Harassment	25
IV. WHAT TO DO WITH A COMPLAINT: BASIC STEPS FOR MANAGERS AND SUPERVISORS	26
V. LEGAL OVERVIEW HANDOUT	<b>Appendix A</b>
VI. LEGAL UPDATE – Powerpoint Screens	<b>Appendix B</b>
PROCEDURES UPDATE – Powerpoint Screens	<b>Appendix B</b>

## **TABLE OF CONTENTS**

### **Page**

<b>VII. MATERIAL PRESENTED BY THE DEPARTMENT OF HUMAN RESOURCES</b>	<b>Appendix C</b>
A. General Information (Paycheck Insert)	
B. Sexual Harassment Helpline Poster	
C. How to File a Sexual Harassment Complaint	
D. Department Report of Employment Discrimination Complaints	
E. Quarterly Report of Sexual Harassment Complaints	
F. Procedures for the Investigation and Resolution of Employment Discrimination Complaints	
G. Sexual Harassment of City Employees Ordinance Administrative Code, Section 16.9-25	
 <b>VIII. MATERIAL PRESENTED BY THE COMMISSION ON THE STATUS OF WOMEN</b>	 <b>Appendix D</b>
A. Frequently Asked Questions	
B. Managers and Employees: Sexual Harassment Resources	
C. Where to File a Complaint	
D. Poster Suitable for Hanging	





## **I. INTRODUCTION**

This handbook is intended as a guide for managers and supervisors to aid them in understanding issues regarding workplace harassment.

Harassment based on an individual's status - whether it be sex, race, color, national origin, religion, creed, age, or handicap - is unlawful, impedes an employee's work opportunities, and negatively impacts productivity.

Sexual harassment continues to be a serious problem in the American workplace. In California, the Department of Fair Employment and Housing (DFEH), which handles violations of state law, reported that 40 percent of the 10,000 complaints which have been filed with the agency involved sexual harassment claims. Similarly, the number of sexual harassment complaints lodged with the federal Equal Employment Opportunity Commission (EEOC) increased by about 25 percent from 1986 to 1990. In 1993, over 40 percent of all harassment claims filed with the EEOC were for sexual harassment. Additionally, the courts, the EEOC and the DFEH have afforded victims of sexual harassment significantly *increased* protections by the courts.

## II. SOURCES OF LAW

Harassment on the basis of sex or other protected status may violate:

- Title VII of the 1964 Civil Rights Act;
- Section 12940 et seq. of the California Government Code (Fair Employment and Housing Act);
- Government Code § 11135 (state funded programs).

Additionally, plaintiffs who file discrimination law suits may also bring causes of action in tort (civil wrongs). Examples of tort causes of action for sexual harassment and other forms of harassment include:

- *Assault* (reasonable apprehension of an unpermitted touching);
- *Battery* (the unpermitted touching by another);
- *Intentional infliction of emotional distress* (willful outrageous conduct by one, intended to inflict emotional damage);
- *Negligent infliction of emotional distress* (negligent conduct which causes emotional distress);
- *Defamation* (written and spoken untruthful statements communicated to others which generally hold that person to ridicule or embarrassment).



### III. SUMMARY OF THE RULES

The following will give you an overview of the legal rules the courts, the DFEH and the EEOC use to determine whether conduct constitutes sexual harassment. The key rules are summarized as follows:

- Sexual harassment is gender related *conduct which is “unwelcome.”*
- Conduct may be “*unwelcome*” even where the complainant *apparently “consented”* or where, on first glance, the complainant’s agreement to engage in sexual conduct appears to have been “*voluntary.*”
- Sexual harassment may result from any form or combination of *visual, verbal, physical or environmental* conduct. The conduct need not be explicit. Nor does the conduct have to have been directed at the complainant.
- A complainant can prove unlawful sexual harassment by showing that unwelcome sexual conduct created a “*hostile or offensive work environment,*” or was made as a “*quid pro quo*” demand (i.e., in exchange for a term or condition of employment).
- “*Retaliation*” for initiating a sexual harassment claim is also actionable as sexual harassment.

### **A. THE CONDUCT MUST BE “UNWELCOME”**

In analyzing claims of sexual harassment, the U.S. Supreme Court has focused on whether the alleged misconduct is “unwelcome,” not on whether the complainant participated in the conduct. “Welcomeness” is different from consent. For example, out of fear of losing her or his job an employee may consent to have sex with the harasser, but may not have wanted to have sex with her/him. Thus, the fact that the employee consented to the conduct is not a complete defense to a harassment claim, although it may be a factor to consider in determining whether the conduct was in fact “unwelcome.”

To determine if conduct is welcome or unwelcome, courts look at the record as a whole and the “totality of the circumstances.” Courts will consider the following elements:

- Who initiated the sexual advances?
- How did the complainant respond to the sexual advances?
- Did the complainant tell the harasser or another person of his or her discomfort and that the conduct was unwelcome? Fear of reprisal and the power of the employer must be taken into account in determining whether the employee should or did communicate to anyone regarding the alleged harassment. However, the complainant’s claim of sexual harassment is considerably strengthened if he/she made a complaint shortly after the harassment.

- Did the complainant wear clothing which is sexually provocative or use speech which encourages sexual attention?

The sexual history of the complainant is generally not an issue unless the complainant has a prior sexual history with the alleged harasser. A complainant is more likely to prevail where she or he has clearly refused the advances and has reported the harassment.

## **B. THREE TYPES OF SEXUAL HARASSMENT**

The courts generally recognize three distinct types of sexual harassment claims:

1.     ***“QUID PRO QUO” HARASSMENT***: Harassment in which a supervisor demands sexual favors in exchange for job benefits;
2.     ***“HOSTILE WORK ENVIRONMENT”***: Sexual harassment that creates an atmosphere in the workplace that is unfriendly to one gender/abusive based on gender; and
3.     ***“RETALIATION”***: Negative employment actions taken against an employee who has submitted a complaint of sexual harassment.



### C. “QUID PRO QUO SEXUAL” HARASSMENT

*Quid pro quo* sexual harassment occurs when a job benefit is either promised in exchange for sexual favors or denied if sexual favors are not given. The following are some examples of *quid pro quo* sexual harassment:

- A supervisor demands sexual favors from a subordinate in exchange for a promotion;
- A Chief dispatcher insists on sexual favors as a precondition to a dispatcher's being assigned overtime;
- A female employee alleges that she received a poor job evaluation because she refused advances from her department head.

#### **D. HOSTILE WORK ENVIRONMENT**

A hostile work environment exists when harassment in the workplace, such as sexual innuendo, sexual insults or sexual abuse is “severe and pervasive” enough to interfere unreasonably with an employee’s ability to perform his/her job. This type of harassment does not require that the complainant suffer any economic or tangible job consequences.

The Department of Fair Employment and Housing regulations provide that sexual harassment may be based on, but is not limited to, the following misconduct:

- *Verbal harassment*, e.g., epithets, derogatory comments or slurs;
- *Physical harassment*, e.g., assault, impeding or blocking movement, or any physical interference with normal walk or movement;
- *Visual forms of harassment*, e.g., derogatory posters, cartoons, or drawings;

The EEOC guidelines provide that physical harassment may be sufficient to create a hostile working environment. Also, harassment may result from a combination of both verbal and physical conduct. If the conduct is physical, the complainant generally need allege fewer incidents to constitute harassment.

Employees can allege environmental sexual harassment either when they personally have been subjected to offensive remarks, inappropriate visual displays or touching or when they personally witnessed harassing conduct towards other employees.

Examples of hostile work environments include:

- A prevalence of sexual slurs, jokes and other offensive conduct, even if some of the workers think such conduct is harmless;
- Pictures of nude and seminude women displayed in the workplace, where supervisors have ignored female employee's complaints;
- Whether the conduct was isolated or repeated. If the conduct was isolated, the question is whether it was severe. A combination of both verbal and non-intimate physical conduct may be sufficient to establish a hostile environment;
- Whether the conduct was perceived seriously or in jest. Generally, courts validate the perception of the victims, if the victim's perception is reasonable.

The United States Supreme Court has recognized that it is sometimes difficult to determine whether particular allegations of harassment rise to the level of a violation of Title VII. In order for the harassment to be actionable, it must be sufficiently severe or pervasive to alter the conditions of the complainant's employment and create an abusive working environment.

## **E. RETALIATION**

Retaliatory conduct often occurs in the workplace when the victim reports sexual harassment, or another form of harassment, and then is disciplined, transferred, shunned, or denied a promotional opportunity. Therefore, the employer should attempt to maintain the status quo after any complaint of harassment is made. If actions are taken against the complainant, the employer must show that there was a legitimate and nonretaliatory reason for any such actions.

A claim of retaliation must meet three criteria:

- The complainant engaged in a protected activity;
- The complainant was subjected to adverse action by the employer; and
- The evidence supports a causal link or “nexus” between the protected activity and the adverse action. This causal link can be inferred by circumstances such as the employer’s knowledge that the employee engaged in protected activities and the proximity in time between the protected activities and the retaliatory actions.

Examples: An employer has been found liable for retaliation where a female employee made meritorious claims of sexual harassment and discrimination, and as a result, the employer terminated her. The employer claimed the discharge was due to dishonesty and other irregularities.



However, the court found the employer went to extreme lengths, without notable success, to build a case against her.

In another case, the court held that a “clash of personalities” was not enough to establish a claim of retaliation. The employee alleged that the employer’s conduct in delaying submission of promotion papers, denying the employee’s request to attend management courses, giving poor performance appraisals, and putting derogatory memos in the employee’s file were retaliatory. However, the court determined that while some of these actions occurred, they did not have an adverse impact on the employee, the employer had legitimate, non-retaliatory reasons for the action, and the actions taken did not create an abusive environment causing the employee’s constructive discharge. The conduct which the employee attributed to retaliation appeared to be more of a clashing of personalities and therefore, no retaliation was found.



## **F. GENERAL RULES**

### **1. BOTH MEN AND WOMEN ARE PROTECTED**

Both men and women are protected from harassment. They may bring claims that they have been harassed by persons of the opposite sex as well as the same sex, i.e., female supervisor harassing female employee, or male employee harassing male employee.

### **2. CONDUCT MUST BE SEXUAL IN NATURE OR DIRECTED AT SOMEONE BECAUSE OF HIS OR HER GENDER**

A demand for sexual favors or an express sexual assault is not required for a valid claim of sexual harassment. Sexual harassment includes verbal, physical, or sexual behavior directed at an individual because of his or her gender. Such conduct may include staring at, commenting on, or touching a person's body, as well as request for acquiescence in sexual behavior. Such conduct may also include the presence of derogatory posters, cartoons or drawings in the workplace, or the making of off-color jokes and other "humorous" statements.

A cause of action for hostile work environment sexual harassment need not allege any sexual conduct whatsoever. A hostile work

environment harassment claim may be established by showing that gender was a substitutional factor in discrimination, and that if plaintiff had been a man (or a woman), she (or he) would not have been treated in the same manner.

### **3. THE “REASONABLE PERSON” STANDARD**

According to the Supreme Court, a work environment is “hostile” where a “reasonable person” would find it so. The Ninth Circuit Court of Appeals (which covers San Francisco) has previously used a “reasonable woman” standard where the complainant is a woman. This standard should most likely result in the same outcome as when a situation is evaluated under a “reasonable person” standard.

### **4. PSYCHOLOGICAL INJURY NOT REQUIRED**

No showing of “psychological injury” is required to establish a case of hostile work environment sexual harassment. The Supreme Court has held that Title VII is violated when the “workplace is permeated with discriminatory intimidation, ridicule and insult, ... that is sufficiently severe or pervasive to alter the conditions of the victim’s employment and create an abusive working environment.” The Court recognized that this standard “takes a middle path between making actionable any conduct that is merely

offensive and requiring the conduct to cause a tangible psychological injury.”

**5. WEIGHT OF THE EVIDENCE IN HARASSMENT CASES**

Harassment often occurs in private between a manager and his/her subordinate in his/her office, or between co-workers who are alone in the field. There is often no one to corroborate the story of either the alleged harasser or the victim. Hence, the court must determine the credibility of the two persons. Contrary to a popular misconception, a victim's case will not fail simply because it is one person's word against another's. It sometimes occurs that once a victim of harassment comes forward, other victims indicate they have been harassed by the same person.

**6. HARASSMENT NEED NOT AFFECT A TERM, CONDITION OR PRIVILEGE OF EMPLOYMENT**

Sexual harassment can occur when an employer created or condoned a discriminatory work environment, regardless of whether the employee lost any tangible job benefits. However, some courts have held that while an employee need not prove tangible job detriment to establish a sexual harassment claim, the absence of such a loss requires a higher showing that the sexual conduct was pervasive and disrupted the working environment.

## **7. REMEDIES AND DAMAGES FOR HARASSMENT**

Most plaintiffs file harassment cases in state court because state remedies are greater than remedies available under the federal law. Under the California FEHA, an employee can be reinstated and awarded back pay, compensatory damages, front pay, prejudgment interest, attorney's fees and other affirmative relief. Under federal law, (Title VII), a plaintiff may be reinstated and recover back pay, front pay (future compensation an employee would have earned had s/he remained on the job), prejudgment interest, attorney's fees and other affirmative relief. Punitive damages are not available and may not be recovered against public employers under both federal and state law.



## **G. LIABILITY**

The manager plays a crucial role in limiting liability. In many instances, an employer will be found liable for failing to ameliorate the hostile work environment or for failing to investigate and rectify a harassment claim once it has been lodged. The employer may be required to go beyond impartial behavior and do whatever is feasible and necessary to protect the complainant's rights.

### **1. EMPLOYER LIABILITY FOR SUPERVISORS' ACTIONS**

Under state law (FEHA), the employer is strictly liable for the harassing conduct of its agents and supervisors against any of its employees. In other words, an employer will be liable for the harassing conduct of its agents and supervisors whether or not the employer knew or should have known of the harassment.

Under federal law (Title VII), the employer may also be strictly liable for harassment by its agents or supervisors. The employer is strictly liable for "quid pro quo" sexual harassment committed by its supervisors. For hostile work environment claims, an employer is liable where the supervisor



acted within the scope of employment, **unless the employer responded adequately and effectively to the harassment.**

In *Meritor Savings Bank v. Vinson*, the United States Supreme Court declared certain limits on employer liability. Factors to be considered in determining employer liability include:

- the position of the alleged harassing employee in the organization
- the extent and severity of the misconduct; and

whether the employer knew or should have known of the harassment.

## **2. EMPLOYER LIABILITY FOR FELLOW EMPLOYEES' ACTIONS**

Under both state and federal law, employers may be liable for the acts of sexual harassment committed by the complainant's fellow employees if the employer knew or should have known of the harassment and failed to take appropriate action.

## **3. EMPLOYER LIABILITY FOR NON-EMPLOYEES' ACTIONS**

Employers may also be liable for the conduct of non-employees if the employer knew or should have known of the harassment, failed to take corrective action, and had some control and/or legal responsibility for the conduct of the offending non-employees.

#### **4. INDIVIDUAL EMPLOYEE LIABILITY**

Individual employees may be held personally liable for engaging in sexual harassment. An employee may be personally liable under the California FEHA and under various tort causes of action (e.g., intentional infliction of emotional distress, assault, battery).

For example, a California court held that a supervisor who used his authority to solicit sexual favors may be personally liable for the tort of intentional infliction of emotional distress. The court observed:

“[W]here ... a person in a position of power to grant or withhold employment opportunities uses that authority to attempt to induce workers and job seekers to submit to sexual advances, prostitution, and pornographic entertainment, and boasts of an ability to intimidate these who displease him, the tort of willful infliction of emotional distress is committed if harm is shown.”

Employees may not be held liable for damages in their individual capacity under Title VII because Title VII limits liability to the employer only.

#### **5. LIABILITY SUMMARY**

- Under the California FEHA, the employer is strictly liable for sexual harassment committed by its agents and supervisors.
- Even if the sexual harassment was not perpetrated by a supervisor or manager, the employer still may be held liable, where the employer knew or should have known of the conduct and did not take action against it.

- To minimize liability, the City and its constituent Departments should disseminate policies and procedures against sexual harassment; fully, fairly and promptly investigate sexual harassment claims; and properly resolve and remedy sexual harassment claims.

## **H. STEPS TO LIMIT LEGAL EXPOSURE**

### **TO HARASSMENT CLAIMS**

An employer can and must take specific steps to prevent against harassing conduct in the workplace. At a minimum, it is important to:

- Promote equal employment opportunity at all levels of the workplace;
- Maintain a neutral, comfortable work environment where all people are treated on their individual merits;
- Be aware of the visual and physical ambiance of the work site and ensure that it does not contain indicators of sex role stereotyping or racial stereotyping;
- Do not allow joking or rumors based on sex-linked physical attributes, or other protected status, in the workplace;
- Prohibit innuendo and talk which isolate individuals by sex or other protected status;
- Be sensitive to any personal relationships between supervisors and subordinates which could adversely impact the good judgment and neutrality of the supervisor;
- If the agency monitors the attire of agency employees, be sure to monitor the attire of *both* sexes;
- Reward and make positive examples of supervisors and managers who have established outstanding records of promoting equal employment opportunity and who foster a sex/race-neutral work environment.

These steps are only the beginning. One of the best preventative measures is setting a positive role model for your organization. Employees will follow the lead of their supervisor. Thus, if the supervisor treats all employees on their merits and without regard to their sex or other protected status, subordinates will follow suit, reducing incidents of harassment.



1. **ADOPT AN EFFECTIVE POLICY AGAINST HARASSMENT.  
DISSEMINATE IT, AND RE-ISSUE IT REGULARLY**

Adopt a policy against sexual harassment and other forms of harassment. Failure to adopt a harassment policy has been held to create employer liability. Distributed the policy to all agency personnel. Make sure that new employees receive it and that all employees are aware of the seriousness and importance of the policy. Such steps may include:

- Distribution of the policy as part of an employment packet to all new hires;
- Regular issuance of the policy to all employees;
- Permanent posting of the policy at work sites;
- Reminders about the policy in memorandums.



## **2. MAKE SURE YOUR DEPARTMENT HAS A CLEAR COMPLAINT PROCEDURE**

A complaint procedure which exists in name only will not eliminate harassment and will not reduce liability. Complaint procedure must be intended to encourage complainants to come forward. A "chain of command" type of procedure which requires the employee to complain first to the supervisor may not be effective because in many instances the supervisor is the alleged perpetrator. The procedure therefore should allow for other avenues of communication. Employees should be informed of the complaint procedure along with the anti-harassment policy.

With regard to peace officers, Senate Bill 459 required the Commission on Peace Officer Standards & Training to develop complaint guidelines for peace officers who are victims of sexual harassment in the workplace. These guidelines are to be followed by city police departments, county sheriffs' departments, districts and state university departments.

## **3. EDUCATE AND TRAIN ALL EMPLOYEES**

Periodic training of all employees, particularly supervisors and managers, is imperative. Training sensitizes employees to issues of harassment and discrimination in the workplace and reduces occurrences of sexual harassment in the workplace. The courts, EEOC and DFEH consider

periodic training relevant to whether the employer should be liable for acts of harassment occurring in the workplace.

Such training can take many forms, including, but not limited to, the following:

- Orientation sessions for all new employees;
- Management/supervisory training sessions and special meetings in each office of the agency with a trainer/facilitator;
- Periodic refresher training for all employees;
- “Working lunch” meetings with harassment prevention as the agenda item;
- Special meetings with “featured speakers” from organizations in the forefront of harassment prevention.

With regard to peace officers, Penal Code §13519.7 requires basic training for law enforcement officers to include instruction on sexual harassment in the workplace. The training shall include, but is not limited to, the following:

- The definition of sexual harassment;
- A description of sexual harassment, using examples;
- The illegality of sexual harassment; and
- The complaint process, legal remedies, and protection from retaliation available to victims of sexual harassment.

This special instruction was to be incorporated into peace officers' basic training no later than January 1, 1995. Peace officers who have received their basic training before January 1, 1995 are to receive supplementary training on sexual harassment in the workplace by January 1, 1997.

Employers should also be aware of the addition of Government Code §12950 to the FEHA. Section 12950 requires the DFEH to amend its current poster on discrimination in employment to include sexual harassment information as well as provide an informational sheet on sexual harassment. The poster must be posted in a prominent location in the employer's workplace, and the information sheet must be distributed to employees, unless the employer already provided equivalent information.

## I. SUMMARY OF THE KEY RULES

### REGARDING HARASSMENT

- Harassment based on an individual's protected status is prohibited by law and condemned by the courts. The test involving such harassment is resolved by reference to whether harassment occurred because of an employee's *protected status* (i.e., race, age, sexual orientation, etc.).
- Harassment based on an individual's protected status can consist of virtually any form or combination of *visual, verbal, physical or environmental* conduct. It need not be explicit, nor even specifically directed at the victim.
- Unlawful harassment can be proven by establishing that the harassing conduct or behavior created a *hostile work environment* or was in *retaliation* for initiating a harassment claim.
- The employer will be held responsible for acts of harassment even if the conduct was not perpetrated by a supervisor or manager, so long as the employer knew or should have known of the conduct and did not take action against it.
- To help prevent against harassment liability and to ensure that agencies have done everything possible to eradicate harassment in the workplace, agencies must promulgate viable policies and procedures against harassment, must fully, fairly and promptly investigate harassment claims, and must properly resolve and remedy harassment claims.



**WHAT TO DO WITH A COMPLAINT:**

**BASIC STEPS FOR MANAGERS  
AND SUPERVISORS**



## **SEXUAL HARASSMENT - YOU HAVE RECEIVED A COMPLAINT - WHAT SHOULD YOU DO?**

### **BASIC STEPS FOR MANAGERS AND SUPERVISORS**

Prompt and effective action, objectivity, thoroughness, and confidentiality are the keys to the proper handling of sexual harassment complaints. The following steps will assist you in responding to complaints of sexual harassment:

1. **If you are approached** by an individual who feels that he/she may have been sexually harassed, take all reasonable action(s) necessary to **stop** the harassment.
2. **Acknowledge the person's concern.** Inform the individual that you and your department take sexual harassment complaints seriously and reassure the affected person that confidentiality will be maintained on a "need to know" basis.
3. **Document the incident.** Request that the complaint be submitted in writing. Continue to follow these steps even if the complaint is not submitted to you in writing. Forward information regarding any complaint of sexual harassment **immediately** to the City's Department of Human Resources, (Confidential Fax: 557-4803).
4. **Inform the person of the City's sexual harassment complaint process.** A complaint may be filed with your Department's EEO office or with the City's Department of Human Resources (415) 557-4900; the employee can utilize the City's **Sexual Harassment Helpline (415) 557-4900** and electronic mail address - [EEOhelpline@ci.sf.ca.us](mailto:EEOhelpline@ci.sf.ca.us) for information. Many labor organizations have a grievance procedure in their labor contracts dealing with sexual harassment. The employee should contact their labor representative for information. Other resources include: the

California Department of Fair Employment and Housing (415) 557-2005 and the U.S. Equal Employment Opportunity Commission (415) 356-5077.

5. **Look into this issue as you would any other issue.** Talk to both people involved. Request that the affected party identify possible alternatives to resolve the issue to assist you in determining possible action(s) that may be taken, including mediation.
6. **Determine if an interim action needs to be taken.** Appropriate action may include separating the individuals, instructing staff and affected individuals of the City's zero tolerance of sexual harassment, and advising appropriate parties that there is to be no retaliation for the report of sexual harassment in any form. Identify possible individuals involved and keep any statements, physical objects or records regarding the incident in a safe and secure place.
7. **Instruct the alleged harasser and the complainant** not to communicate directly or indirectly, with each other or with any other employee about the allegations.
8. **Maintain an open line of communication with all parties.** Monitor the work environment; Address, where appropriate, rumors. Take care to prevent "shunning" as the result of filing a complaint.
9. **Ensure that remedial action is taken if sexual harassment is found;** Follow through to make sure remedial actions are effective, and check back on a regular basis, with the affected persons to determine that the work environment is harassment free.
10. **Assure the complainant and advise the alleged harasser,** even if no sexual harassment is found, that you and your department intend to protect all employees against unlawful harassment, retaliation or reprisal, and to take necessary action

including discipline to maintain a work environment free of sexual harassment. Depending on the circumstances it may be necessary to hold a meeting with those who need to know in order to prevent continuation of a negative work environment. Be mindful that the information shared not violate confidentiality.

11. **Monitor** the workplace to insure that potential problems are addressed at the earliest time and to prevent problems from escalating.





# APPENDIX A



## SOURCES OF LAW PROHIBITING SEXUAL HARASSMENT

### FEDERAL:

- TITLE VII OF THE CIVIL RIGHTS ACT OF 1964;
- THE CIVIL RIGHTS ACT OF 1991

### STATE :

- CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT

### PROTECTION ALSO UNDER:

- SAN FRANCISCO ADMINISTRATIVE CODE
- CIVIL SERVICE RULES
- CITY AND DEPARTMENTAL POLICIES

SEXUAL HARASSMENT CAN BE:

◇ MALE V. FEMALE

◇

◇ MALE V. MALE

◇

◇ FEMALE V. MALE

◇

◇ FEMALE V. FEMALE



SEXUAL HARASSMENT IS:

1. CONDUCT OF A SEXUAL NATURE :

THAT IS CONDUCT WHICH IS EITHER:

- A. "SEXUAL" IN CONTENT; OR
- B. CONDUCT WHICH IS DIRECTED  
TOWARD ONLY ONE SEX

2. WHICH IS 'UNWELCOME'

IT CAN BE:

1. VERBAL: RACY JOKES

SEXUAL ADVANCES OR PROPOSITIONS

COMMENTS LIKE: "HEY BABY"; "THAT  
OUTFIT LOOKS REALLY SEXY"

2. VISUAL: POSTED CENTERFOLDS

OFF-COLOR CARTOONS

LEERING

3. PHYSICAL: MESSAGES

TOUCHING

BLOCKING PATH

## TYPES OF SEXUAL HARASSMENT

1. QUID PRO QUO
2. HOSTILE WORK ENVIRONMENT

## QUID PRO QUO

offering or denying job benefits as part of request for sexual favors

1. employee must be member of a protected class
2. request must be of a sexual nature
3. it must be unwelcome
4. it must be a condition of employment



## HOSTILE WORK ENVIRONMENT

1. BEHAVIOR WHICH IS PHYSICAL, VERBAL OR VISUAL
2. SEXUAL IN NATURE, OR DIRECTED AT ONE SEX
3. UNWELCOME
4. SEVERE AND PERVASIVE

HOSTILE WORK ENVIRONMENT NEED NOT BE  
DIRECTED AT THE VICTIM

BEHAVIORS WHICH ARE OVERHEARD OR SEEN AND  
WHICH AFFECT THE WORK ENVIRONMENT OF THOSE  
WHO ARE OFFENDED OR UPSET MAY BE ENOUGH TO  
CREATE A HOSTILE WORK ENVIRONMENT

**“SEVERE AND PERVASIVE”**

work place filled with sexual innuendo, abuse, or insults

which unnecessarily interferes with an

employee's ability to perform work

## ELEMENTS OF RETALIATION

1. PROTECTED ACTIVITY;
2. ADVERSE EMPLOYMENT ACTION; AND
3. A CAUSAL CONNECTION.



## EXAMPLES OF PROTECTED ACTIVITY

1. Filing a formal charge of discrimination with the Equal Employment Opportunity Commission or California Department of Fair Employment and Housing.
2. Filing a grievance complaining about discrimination.
3. Filing a charge with the Civil Service Commission EEO Unit, or departmental EEO Unit.
4. Writing a letter complaining about discrimination.
5. Complaining orally about harassment.

## EXAMPLES OF ADVERSE EMPLOYMENT ACTIONS

1. Failure to hire.
2. Failure to promote.
3. Failure to receive beneficial assignments.
4. Failure to obtain a transfer.
5. Transfers.
6. Removal from departmental committees.
7. Dismissal.
8. Shunning.
9. Any discrete unfavorable treatment.

## ◇ COSTS OF HARASSMENT COMPLAINTS

Harassment complaints may have many cost components. There may be costs associated with:

1. absenteeism
2. loss of productivity
3. negative impact on morale
4. costs of management time in defending against any resulting legal or administrative action
5. costs associated with legal representation
6. damages awards as the result of a lawsuit

## **SUPERVISOR RESPONSIBILITIES**

- 1. BE FAMILIAR WITH THE CITY POLICY AND ANY DEPARTMENTAL POLICIES ON SEXUAL HARASSMENT**
- 2. TAKE ALL COMPLAINTS SERIOUSLY**
- 3. INVESTIGATE COMPLAINTS PROMPTLY**
- 4. TAKE EFFECTIVE DISCIPLINARY ACTION WHERE APPROPRIATE**
- 5. BE A ROLE MODEL REGARDING APPROPRIATE BEHAVIOR**

## CONFIDENTIALITY

1. YOU CANNOT PROMISE CONFIDENTIALITY
2. YOU SHOULD, HOWEVER, KEEP THE ALLEGATIONS CONFIDENTIAL TO THE EXTENT POSSIBLE
3. ALSO, EMPHASIZE TO THOSE PARTICIPANTS IN THE INVESTIGATION THAT THEY SHOULD NOT DISCUSS THE INVESTIGATION OR ALLEGATIONS





# APPENDIX B



**Sexual Harassment Training  
Legal Update – 1998**

**Presented by  
Linda Ross,  
Deputy City Attorney**



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**WHAT IS  
SEXUAL HARASSMENT?**

SEXUAL HARASSMENT IS  
CONDUCT THAT IS:

1. UNWELCOME
2. "BECAUSE OF SEX"
  - A. Sexual in Content, or
  - B. Directed Toward Someone Based on Their Sex

**WHAT ARE THE TYPES  
OF HARASSMENT?**

- QUID PRO QUO
- HOSTILE WORK ENVIRONMENT
- RETALIATION

**UNWELCOME CONDUCT**

Object + person welcome  
~~conduct~~ conduct.  
CONDUCT THAT IS  
UNWELCOME.

**RULE #1  
UNWELCOME CONDUCT**

Sexual harassment is conduct  
that is unwelcome.

**BECAUSE OF SEX:**

ADVERSE TREATMENT BASED ON SEX

Needn't be overtly sexual  
If singled out because of  
her sex.



**RULE #2**  
**BECAUSE OF SEX**

Sexual harassment is harassment  
"because of sex." It can be sexual in  
content or it can be singling someone  
out for adverse treatment because of  
their sex.

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**RULE #3**  
**BECAUSE OF SEX:**

SAME SEX HARASSMENT

*Men & Women protected*

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**BECAUSE OF SEX**

Both men and women are protected  
from sexual harassment. They may  
bring claims that they have been  
harassed by persons of the  
opposite sex or by persons of the  
same sex.

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## **HOSTILE WORK ENVIRONMENT**

### **RULE #4 HOSTILE WORK ENVIRONMENT**

Sexual harassment is present when the workplace is permeated with discriminatory intimidation, ridicule and insult that is sufficiently severe or pervasive to create an abusive working environment.

## **RETALIATION**

## **RULE #5 RETALIATION**

Retaliation exists when the employee is subjected to adverse action because the employee complained about harassment.

## **LIABILITY**

## **RULE #6 LIABILITY**

Under California law, individual harassers are liable to their victims for sexual harassment.

Employers are strictly liable for any harassment by a supervisor.

**Rule # 6 continued**  
**LIABILITY**

Employers are also liable for harassment by non-supervisors, if the employer knew or should have known of the conduct and did not take appropriate action.

**DAMAGES**

**WHAT IS**  
**SEXUAL HARASSMENT?**

SEXUAL HARASSMENT IS CONDUCT THAT IS:

1. UNWELCOME
2. "BECAUSE OF SEX"
  - A. SEXUAL IN CONTENT, OR
  - B. DIRECTED TOWARD SOMEONE BASED ON THEIR SEX.

**WHAT ARE THE TYPES  
OF HARASSMENT?**

■ QUID PRO QUO

■ HOSTILE WORK  
ENVIRONMENT

■ RETALIATION

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# **PREVENTING SEXUAL HARASSMENT**

**PRESENTED BY**

**DOROTHY YEE, ACTING MANAGER,  
EEO PROGRAMS  
DEPARTMENT OF HUMAN RESOURCES**



## Preventing Sexual Harassment



### Procedures

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## Requirements Changed

- San Francisco 1996 Charter
- San Francisco Administrative Code
- Civil Service Commission Rules
- Human Resources Director Procedures

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## What's New since 1996?

- Number of days an individual has to file a sexual harassment complaint is now:
  - 30 days?
  - 60 days?
  - 90 days?
  - ✓ 180 days?
  - 360 days?
- 180 days

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What's New since 1996?

• **Human Resources Director**

- reviews complaints and decides course of action for each complaint
- coordinates all investigations
- resolves all complaints of employment discrimination, including sexual harassment

What's New since 1996?

• **Right to Appeal**

Decision of the Human Resources Director may be **appealed** to the Civil Service Commission

What's New since 1996?

- **Sexual Harassment Prevention Helpline:**  
**557-4900**
- **Specialized staff** in Department of Human Resources EEO Division:  
**Esther Leong**  
**Joan McAllister**

30 day after decision

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### What's New since 1996?

- **Quarterly reports** to the Commission on the Status of Women
- **Annual reports** to Board of Supervisors, Mayor, Commission on the Status of Women, Human Rights Commission

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### Department Responsibilities

- **Communicate Policy** that Sexual Harassment is Illegal and Prohibited
- **Educate** employees and supervisors on appropriate workplace behavior
- **Take Immediate Action**
- **Monitor the workplace**

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### What to Do If Employee Complains

- **Act immediately** to stop harassment
- **Separate** employees pending investigation
- **Inform** employee of rights and resources
- **Report** complaint to Human Resources
- **Get help**, if needed

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Resources for Departments

- **Your Department's** Human Resources, Equal Employment or training Personnel
- **Department of Human Resources**, Sexual Harassment Prevention Helpline, EEO Division, MEDD
- **City Attorney's Office**

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Resources for Employees

- Department's HR or EEO Personnel
- Sexual Harassment Prevention **Helpline**
- Commission on the Status of Women
- Employee Assistance Program
- Employee's union
- External regulatory agencies (EEOC,DFEH)

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# APPENDIX C





City and County of San Francisco

## **SEXUAL HARASSMENT IS AGAINST THE LAW!**

***Sexual Harassment Is Illegal.*** It is a form of discrimination forbidden by federal, state and local laws.

The City and County of San Francisco will not tolerate sexual harassment. *Every* city employee has the right to work in an environment free from discrimination, including sexual harassment.

***Learn:***

***What Is Sexual Harassment...***

***What Are Your Rights...***

***How to Get Help...***

***Call:***

***Sexual Harassment Helpline: 557-4900***



## WHAT IS SEXUAL HARASSMENT?

*Sexual harassment* is unwelcome sexual advances, requests for sexual favors, or verbal, physical or visual conduct of a sexual nature when:

- such conduct is explicitly or implicitly made a part or condition of employment (“quid pro quo” harassment), or
- harassment is so severe or pervasive that it unreasonably interferes with work performance or creates an abusive, intimidating, or hostile work environment (“hostile work environment” harassment).

*Both* women and men can be harassed, and can be harassers. People of the same sex also can harass each other.

*Examples* may include: sexual jokes, or comments, name calling; repeated requests for dates after being told “no”; leering, lewd gestures; patting, groping, blocking free movement; sexual posters, graffiti, e-mail, cartoons or objects; punishing or excluding someone who complained or who participated in an investigation.

## HOW TO GET HELP

**Tell your supervisor or another responsible manager.** If you do not want to tell your supervisor, contact your department’s personnel office, or the Department of Human Resources:

**Sexual Harassment Helpline: (415) 557-4900**

**E-mail: [EEOhelpline@ci.sf.ca.us](mailto:EEOhelpline@ci.sf.ca.us)**

**Address: 44 Gough Street, San Francisco, CA 94103**

**File a complaint.** You can file a complaint with:

1. Your Department’s personnel or EEO officer
2. The Department of Human Resources (415) 557-4900
3. California Department of Fair Employment and Housing (415) 557-2005
4. U.S. Equal Employment Opportunity Commission (415) 356-5077

*SF City Employees: Have you been sexually harassed?*

## **CALL THE SEXUAL HARASSMENT HELPLINE!**



**HELPLINE: 557-4900**

*Sexual harassment is against the law! It is unwelcome behavior of a sexual or sex-based nature that is made a condition of employment, or creates a hostile work environment. Sexual harassment is prohibited gender discrimination, a violation of federal, state, and local laws.*

Call 557-4900 to find out:

- How to get help
- How to help yourself
- How to file a complaint
- More information about sexual harassment.

Call anytime. Calls will be returned by the next business day.

Inquiries can also be filed by e-mail ([eeo-helpline@ci.sf.ca.us](mailto:eeo-helpline@ci.sf.ca.us)), by fax (557-4803), or by mail (Department of Human Resources, 44 Gough Street, SF 94103).



**CITY AND COUNTY OF SAN FRANCISCO  
DEPARTMENT OF HUMAN RESOURCES**

**HOW TO FILE A DISCRIMINATION COMPLAINT**

**AUTHORITY:**

The authority to investigate complaints of employment discrimination stems from the San Francisco Charter, Section 10.103, and Civil Service Commission Rule 3. The Human Resources Director is responsible for the review and resolution of complaints. The Director may designate personnel to investigate complaints and make recommendations for resolution.

The role of the EEO investigator is that of an objective third party, representing neither the complainant (employee/applicant), nor the respondent (department).

**COMPLAINT PROCESS:**

**BASIS:** Discrimination complaints submitted for investigation must be based on one or more of the following: RACE, COLOR, RELIGION, CREED, SEX, NATIONAL ORIGIN, ETHNICITY, AGE, DISABILITY or MEDICAL CONDITION, ACQUIRED IMMUNE DEFICIENCY (AIDS/HIV) or AIDS RELATED CONDITIONS, POLITICAL AFFILIATION, SEXUAL ORIENTATION, ANCESTRY, MARITAL or DOMESTIC PARTNER STATUS, GENDER IDENTITY, PARENTAL STATUS, OTHER NON-MERIT FACTORS.

RETALIATION against any employee or applicant for having made a good faith complaint or report of discrimination, or for participating or aiding in an investigation of employment discrimination is also prohibited.

**ISSUES:** Actions complained of may include the following: DENIAL OF EMPLOYMENT, DENIAL OF TRAINING, DENIAL OF PROMOTION, DENIAL OF REASONABLE ACCOMMODATION (for disability or religion), TERMINATION, LAY-OFF, CONSTRUCTIVE DISCHARGE, DISCIPLINARY ACTION, HARASSMENT, WORK ASSIGNMENT, SEXUAL HARASSMENT, and COMPENSATION.

Other issues, such as a disagreement regarding Department rules or regulations affecting working conditions, may be subject to review through the Employee Grievance procedure.

**FILING:** Submit a letter or other document that describes your complaint of discrimination. Or, contact the EEO Office in your department or in the Department of Human Resources, or your employee representative to assist you in submitting a complaint. All complaints must be signed by the person making the complaint and sent to:

Director, Department of Human Resources  
Attention: EEO Division  
44 Gough Street  
San Francisco, CA 94103

The letter of complaint should include the following:

1. Name, address and daytime phone number.
2. The basis for complaint: i.e. race, religion, etc.
3. The discriminatory action: i.e., denial of employment, denial of reasonable accommodation; termination; etc.
4. The date(s) the action(s) in question took place.



5. The City and County department and work unit accused of discrimination.
6. The names of the individuals accused of discrimination.
7. The names and daytime phone numbers of any witnesses to the alleged discriminatory action.
8. A detailed explanation of the sequence of events which you believe to be discriminatory.
9. The specific action you are seeking in order to correct the alleged discrimination.

If you are a current City and County employee, please also include your current Civil Service classification and the department where you are employed.

Complaints of sexual harassment can also be made by calling the Department of Human Resources Sexual Harassment Helpline at 415-557-4900.

#### **FILING DEADLINE:**

Letters of complaint must be filed within (60) calendar days of the date the discriminatory action took place, or the date the employee/applicant should have first become aware of the violation. Sexual harassment complaints must be filed within one hundred eighty (180) calendar days of the date of the alleged sexual harassment. Therefore, time is an important factor when filing a complaint with the Department of Human Resources.

#### **INVESTIGATION:**

Upon review of the complaint by the Human Resources Director, the complaint will be referred to an EEO investigator to review for timeliness and jurisdiction. The investigator will then contact the person filing the complaint, either by mail or phone, to schedule an intake interview. Intake interviews afford the investigator an opportunity to clarify the issues involved and also allow the person filing the complaint an opportunity to present the complaint in more detail.

The investigation includes reviewing and obtaining copies of relevant documents which may include personnel files, attendance reports and performance evaluations, interviewing co-workers and supervisors, and other actions considered necessary in order to obtain relevant information.

It is important to remember that the individual who brings forth the complaint is responsible for substantiating the charges. Therefore, it is necessary to cooperate with the investigator by providing any written material, names of individuals to interview, or any other information which would assist the investigation.

Note: During the intake interview, the entire complaint process will be explained in more detail by the assigned investigator. Any questions regarding the process can be asked during the intake interview.

#### **ALTERNATIVE DISPUTE RESOLUTION:**

Complainants may be asked to consider resolving their complaint through an alternative dispute resolution process facilitated by trained staff.

#### **HUMAN RESOURCES DIRECTOR ACTION AND APPEAL PROCEDURES:**

The Human Resources Director will review the complaint and investigative report and shall make a finding on the charges. The Director may refer the complaint to the Discrimination Complaint Review Panel for review. The Director's determination will be sent to the complainant and respondent department and shall be final unless it is appealed to the Civil Service Commission and is reversed or modified.



DEPARTMENT REPORT OF EMPLOYMENT DISCRIMINATION COMPLAINT

Return to: Dorothy Yee, DHR/EEO Division, 44 Gough Street, San Francisco, CA 94103

1. Complaint Filing Date: \_\_\_\_\_
2. Department/Worksite: \_\_\_\_\_
3. Complainant: \_\_\_\_\_ Tel. No. (Work) \_\_\_\_\_  
Address: \_\_\_\_\_ Tel. No. (Home) \_\_\_\_\_
4. Complainant's Current Employment Status: (underline one) Classification: \_\_\_\_\_  
PCS TCS LT NCS PV PE TE PROBATION Not a City Employee

5. Basis of Discrimination:

- ☐ Race: \_\_\_\_\_
- ☐ Color: \_\_\_\_\_
- ☐ Religion: \_\_\_\_\_
- ☐ Creed: \_\_\_\_\_
- ☐ Sex: \_\_\_\_\_
- ☐ National Origin: \_\_\_\_\_
- ☐ Ethnicity: \_\_\_\_\_
- ☐ Age: \_\_\_\_\_
- ☐ Disability/Medical Condition: \_\_\_\_\_
- ☐ Political Affiliation: \_\_\_\_\_
- ☐ Sexual Orientation: \_\_\_\_\_
- ☐ Ancestry: \_\_\_\_\_
- ☐ Marital or Domestic  
Partner Status: \_\_\_\_\_
- ☐ Gender Identity: \_\_\_\_\_
- ☐ Parental Status: \_\_\_\_\_
- ☐ Other Non-Merit Factors: \_\_\_\_\_
- ☐ Retaliation: \_\_\_\_\_

6. Issue complained of:

- ☐ Denial of Employment
- ☐ Denial of Training
- ☐ Denial of Promotion
- ☐ Denial of Reasonable Accommodation
- ☐ Termination
- ☐ Lay-off
- ☐ Constructive Discharge
- ☐ Disciplinary Action
- ☐ Harassment
- ☐ Work Assignment
- ☐ Sexual Harassment
- ☐ Compensation
- ☐ Other: Specify: \_\_\_\_\_

7. Describe the circumstances of the alleged discrimination. (Attach letter of complaint)  
Please include date(s) of adverse employment action(s).

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\*8. What steps does the department recommend to be taken to address this complaint? i.e.  
Investigation, alternative dispute resolution, dismissal?

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\*8a. Name and position of staff who will implement recommended steps.

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9. Completed by: \_\_\_\_\_ Tel. No. \_\_\_\_\_ Date: \_\_\_\_\_  
Address: \_\_\_\_\_

\*10. Please notify DHR/EEO in written form immediately upon resolution of this complaint.

\*Subject to the Human Resources Director's approval.

\*\*\*\*\*

Human Resources Director Review

EEO File Number: \_\_\_\_\_

/\_\_\_/ Approve department's recommendations for addressing complaint. Proceed and notify HR  
Director of actions, findings, and recommendations for resolution.

/\_\_\_/ Complaint is assigned by HR Director to: \_\_\_\_\_  
and/or the following actions are to be taken:

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/\_\_\_/ Other: \_\_\_\_\_

\_\_\_\_\_  
for Andrea Gourdine, HR Director

\_\_\_\_\_  
Date

**CITY AND COUNTY OF SAN FRANCISCO  
DEPARTMENT OF HUMAN RESOURCES**

[CONFIDENTIAL]

**SUBJECT:     *QUARTERLY REPORT OF SEXUAL HARASSMENT COMPLAINTS***

DEPARTMENT: \_\_\_\_\_  
Completed by: \_\_\_\_\_

DATE: \_\_\_\_\_  
Phone # \_\_\_\_\_

REPORT PERIOD: FY \_\_\_\_\_ ☐ 7/1-9/30 ☐ 9/30-12/31 ☐ 1/1-3/31 ☐ 4/1-6/30

**Instruction:** In accordance with San Francisco Administrative Code 16.9-25(e), Sexual Harassment of City Employees Ordinance, please report all sexual harassment complaints filed/reported this quarter. For each complaint, please indicate the name, whether this complaint was previously reported to DHR, and the status of the complaint. (See definitions below.) Names of complainants will remain confidential. If the complaint was not previously reported, please complete a "Department Report of Employment Discrimination Complaint" with this report. Return this report in an envelope marked 'confidential' to Esther Leong, DHR EEO Division, 44 Gough Street, San Francisco, CA 94103, within 30 days after the end of the report quarter. For assistance, please call Ms. Leong at 557-4842.

Name of Complainant	Date Reported to DHR	Status (Check only one column)				
		Pending	Settled	Insuffic'nt Evidence	For Cause	Admin. Closed

Attached additional sheet if necessary.

**Definitions:** *Settled:* complaint was resolved; *Insufficient Evidence:* complaint was investigated and there was insufficient evidence to establish sexual harassment; *For cause:* investigated and there was sufficient evidence that sexual harassment occurred; *Administratively Closed:* complaint was not investigated because there was no jurisdiction or it was deferred to another jurisdiction, it was withdrawn, or it was untimely.







**CITY AND COUNTY OF SAN FRANCISCO  
DEPARTMENT OF HUMAN RESOURCES**

**PROCEDURES FOR THE INVESTIGATION AND RESOLUTION  
OF EMPLOYMENT DISCRIMINATION COMPLAINTS**  
(effective 1/1/97)

**1. PURPOSE**

The Charter of the City and County of San Francisco provides that the Human Resources Director shall review and resolve complaints of employment discrimination and that the Civil Service Commission shall review and resolve appeals of such actions by the Human Resources Director.

Pursuant to Civil Service Commission Rule 3, the Human Resources Director hereby establishes procedures to review and resolve allegations of discrimination based on race, color, religion, creed, sex, national origin, ethnicity, age, disability or medical condition, political affiliation, sexual orientation, ancestry, marital or domestic partner status, gender identity, parental status, retaliation, other non-merit factors, or any other category provided by ordinance.

The purpose of these procedures is to provide a mechanism for the investigation and resolution of such charges of discrimination and to provide an appropriate remedy for the complainant where a determination is made that discrimination prohibited by this rule has occurred.

**2. AUTHORITY**

All complaints of discrimination are to be reported immediately to the Human Resources Director. The Human Resources Director shall review the complaint and may delegate the complaint to a certified eeo investigator for investigation. Complaints of sexual harassment will be delegated to an eeo specialist/sexual harassment investigator, for investigation.

The Human Resources Director shall retain authority for the final disposition of each complaint of employment discrimination. The determination of the Human Resources Director shall be enforced by every employee and officer unless the decision is appealed to the Civil Service Commission and reversed.



The Director may delegate the responsibility for reviewing, investigating, and resolving allegations of discrimination to personnel who are certified to be competent to conduct investigations. Such personnel may include human resources or other personnel under departmental appointing officers. The Human Resources Director shall establish standards of competency and shall certify that individuals conducting investigations comply with the standards.

### **3. CENTRALIZATION OF COMPLAINTS**

Pursuant to these procedures complaints of employment discrimination may be filed with the Human Resources Director or filed with a department's appointing officer or eeo officer. Complaints that are filed in departments shall be immediately reported to the Human Resources Director. The Human Resources Director shall review the complaint and determine the appropriate actions for resolution of the complaint. If the complaint is delegated to an eeo investigator, the investigator shall report periodically to the Human Resources Director the status of the investigation. All investigations of employment discrimination complaints shall be supervised by the Human Resources Director, the Director of EEO Programs, an Assistant Manager, EEO Programs, or other personnel specifically designated by the Human Resources Director.

### **4. FILING OF COMPLAINTS USING OTHER PROCEDURES**

Neither Civil Service Commission Rule 3 nor these procedures precludes an individual's right to file the same or similar complaint with any state or federal regulatory agency with jurisdiction over such claims, to file a grievance under a collective bargaining agreement, or to litigate for relief.

If a complaint of discrimination that is filed under these procedures is also filed with another enforcement agency or administrative body, the Human Resources Director may elect to defer the investigation of the complaint to the other procedure. Such procedures may include a grievance procedure for resolving discrimination complaints that is spelled out in the collective bargaining agreement of the complainant's employee organization. Other investigative procedures include the U.S. Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or other similar regulatory agency. The determination by the Human Resources Director to defer the investigation of a discrimination complaint to another procedure shall be made on a case by case basis and cannot be appealed.

The Human Resources Director may give the complainant the opportunity to elect one of the investigative procedures available within the City and County. Once the procedure is elected, the decision will not be reversed. If the complainant does not elect one of the investigative procedures, the Director shall select the investigative procedure.

When a charge of discrimination filed under this rule is also the subject or element of litigation, procedures under this rule shall cease.

## **5. WHO CAN FILE A COMPLAINT OF DISCRIMINATION**

Any employee or applicant may file a complaint alleging that he or she has been discriminated against as a result of an employment decision made by an agency, department, or commission of the City and County of San Francisco; or alleging that he or she has been retaliated against for having made or participated in the investigation of a complaint of discrimination.

## **6. FILING A COMPLAINT OF DISCRIMINATION**

Filing a complaint of discrimination pursuant to Civil Service Commission Rule 3 shall consist of one of the following actions:

### **All complaints:**

A letter signed by the employee or applicant to the Human Resources Director specifying those facts that support the charge. The letter of complaint must clearly state the basis (race, age, etc.) upon which the charge of discrimination is filed, the specific adverse action about which the employee or applicant is complaining and the relief requested.

### **Sexual harassment complaints may also be filed by:**

A complaint of sexual harassment can be called in to the sexual harassment helpline at the Department of Human Resources.

A statement which specifies facts which support the charge of sexual harassment. This statement will be summarized and mailed to the employee or applicant for signature and must be returned to the Department of Human Resources by a designated date.



## **7. FILING DEADLINE REQUIREMENT**

All complaints must be filed, as specified above, within the following time period:

### **Complaints, other than sexual harassment:**

60 calendar days from the alleged discriminatory action, or from the date the complainant should have been aware of the alleged violation.

### **Sexual harassment:**

180 days from the date of the alleged discriminatory action. If the complaint is made by phone to the sexual harassment helpline and includes the key elements of a written complaint, the date of the call may be used to establish the filing date.

## **8. INFORMAL RESOLUTION OF COMPLAINT**

The Human Resources Director or designated investigator, shall review the complaint of employment discrimination and may make attempts to resolve the complaint informally. The Human Resources Director shall recruit and maintain a pool of mediators who are trained and certified in mediation, alternative dispute resolution and conciliation. The Human Resources Director or designee may contact both parties to determine if resolution of the complaint is possible. A mediator shall serve as a vehicle to mediate an amicable settlement where possible. Such attempt shall not imply any determination or concession by either party with regard to the merit of the charges. Successful resolutions shall result in written agreement signed by both parties. Copy of said agreement shall be submitted to the Human Resources Director for review. The settlement agreement shall be implemented as soon as practicable.

## **9. INVESTIGATIVE PROCEDURES**

The Human Resources Director directs that complaints be resolved in a timely manner, and to that end the Director directs that the process to resolve complaints be implemented as follows:

Upon receipt of an employment discrimination complaint, the Human Resources Director, or a designee, shall review the complaint and assign the complaint to an eeo investigator. Complaints of sexual harassment will be assigned to the eeo investigator of sexual harassment in the Department of Human Resources.

Within thirty (30) business days of receipt of a complaint by an investigator, the investigator shall review the charge for timeliness, jurisdiction and completeness, contact the complainant and schedule an intake interview to gather additional information and to complete the appropriate EEO complaint form, notify the department of the charges and request response and relevant information from the department, and attempt to informally settle the complaint.

The investigator shall conduct an investigation of the charges. Such investigative activity may include the review of relevant documents, interviewing individuals named by either the complainant or the respondent department, or other relevant persons, and such other activity as may be necessary to obtain information pertinent to the specifics of the charges.

Upon completion of the investigation, the investigator shall complete an investigative report with findings and recommendations supported by the investigation. The report shall be forwarded to the Human Resources Director for review and determination on the charges.

Unless delayed by circumstances beyond the control of the investigator, the investigation will be completed within ninety (90) calendar days. If an investigation cannot be completed within the ninety (90) days, the investigator will report to the Human Resources Director the status of the investigation and the reason for the delay.

## **10. HUMAN RESOURCES DIRECTOR'S ACTION**

The Human Resources Director shall review the complaint, the department's response, the investigative report, and shall make a finding on the charges, or refer the complaint to the Discrimination Complaint Review Panel to review the complaint and make a recommendation to the Director.

The Human Resources Director shall send the determination and recommendations of corrective action, if any, to the complainant and the respondent department. The determination of the Human Resources Director shall be final unless it is appealed to the Civil Service Commission and is reversed.

## **11. REVIEW PANEL**

The Human Resources Director may forward the staff's investigative report to the Discrimination Complaint Review Panel to either review the report as individual members of the panel or to conduct a hearing to review the report and make its



recommendation to the Director. The Review Panel, appointed by the Human Resources Director, is a three-member body which acts by majority vote of its members. The members of the Review Panel may include subject matter experts from the Human Rights Commission, the Commission on the Status of Women, the Department of Human Resources, the Mayor's Office, other city departments, or other organizations. Members of the Review Panel will have ten (10) business days to review the investigative report, to sustain or reverse its findings and recommendations, or to schedule a hearing to take testimony on the complaint. The Review Panel's recommendation is then submitted to the Human Resources Director.

If the Review Panel determines that a hearing of the charges is warranted, both parties shall be given at least ten (10) business days notice of the date, time, and location of the hearing. The complainant and the department shall have the right to representation at the hearing, to call a reasonable number of witnesses, and to present arguments to the Panel. The Panel shall issue its recommendations to the Human Resources Director at the conclusion of the hearing.

## **12. APPEAL PROCEDURES**

Either the complainant or the department may appeal the decision of the Human Resources Director to the Civil Service Commission within thirty (30) calendar days of the postmark date of the Director's decision by submitting such appeal in writing and specifying the reasons for the appeal. Upon notification of the appeal by the Civil Service Commission, the Human Resources Director shall submit to the Commission for its review copies of the staff's investigative report, the recommendation of the Review Panel if applicable, and the Director's finding. The taking of evidence and oral arguments at the hearing of the appeal by the Civil Service Commission will be permitted only as the Commission may determine. The decision of the Commission will be final and no reconsideration shall be allowed.

## **13. AMENDMENTS TO PROCEDURES**

The Human Resources Director may at any time amend these procedures. Any such amendment shall be posted for a minimum of seven (7) calendar days prior to adoption. Upon adoption, changes shall be in effect. No change in the procedures shall affect a case which is pending resolution.



**SAN FRANCISCO ADMINISTRATIVE CODE-  
SECTION 16.9-25  
(SEXUAL HARASSMENT OF CITY EMPLOYEES)**

AMENDING CHAPTER 16 OF THE SAN FRANCISCO ADMINISTRATIVE CODE, BY REPEALING SECTION 16.9-25, BY ADDING SECTION 16.9-25, BY AMENDING THE POLICY ON SEXUAL HARASSMENT; CHARGING THE HUMAN RESOURCES DIRECTOR WITH PROVIDING QUARTERLY AND ANNUAL REPORTS ON SEXUAL HARASSMENT; AND PROVIDING THAT THE COMMISSION ON THE STATUS OF WOMEN MAY OFFER SUPPORT ON RELATED MATTERS.

Note: Additions and substitutions are underlined;  
deletions are in (( double parentheses )).

Be it ordained by the people of the City and County of San Francisco:

1. Section 16.9-25 of the San Francisco Administrative code is hereby repealed in its entirety.

2. Chapter 16 of the San Francisco Administrative code is hereby amended by adding section 16.9-25 thereby reading as follows:

Section 16.9-25 ESTABLISHING A POLICY ON SEXUAL HARASSMENT FOR ALL CITY EMPLOYEES, DEPARTMENTS, AGENCIES, BOARDS AND COMMISSIONS; DEFINING SEXUAL HARASSMENT; REQUIRING EDUCATION AND DISTRIBUTION OF THIS POLICY.

(A) SEXUAL HARASSMENT: (1) It is the policy of the City and County of San Francisco that, in accord with State and Federal laws, each city employee has the right to work in an environment free of discrimination, including sexual harassment, and that sexual harassment is unacceptable and will not be tolerated in the workplace. The City and County of San Francisco will take all reasonable steps within its control to provide a workplace in which all individuals are treated with respect and dignity. The City and County of San Francisco recognizes that the elimination of sexual harassment in the workplace will create a better working environment, increase productivity, and improve relationships for all employees.

(2) Sexual Harassment of a City official or employee is, in accord with State and federal laws, strictly prohibited by another City official or employee. This policy applies to all officials and employees and to all phases of employment, including, but not limited to, recruitment, testing, hiring, promotion or demotion, transfer, layoff, termination and selection for training.

(3) It is further the policy of the City and County of San Francisco to take reasonable steps, in accord with State and Federal laws, to provide its employees with a workplace free of sexual harassment by non-employees, including, but not limited to: contractors and subcontractors of the City and County of San Francisco, clients, volunteers, interns, and members of the general public. It is also the policy of the City and County of San Francisco to take reasonable steps to prohibit its City officials and employees, acting within the scope of their official duties and employment, from sexually harassing non-employees, including, but not limited to: contractors and subcontractors of the City and County of San Francisco, clients, volunteers, interns, and members of the general public.

(4) In order to create and maintain a workplace free from sexual harassment of employees, the City and County of San Francisco will, in accord with State and Federal laws, take all reasonable steps to:

(a) set an example through its leadership and management that sexual harassment will not be tolerated;

(b) train and educate management and public officials as to their responsibility to carry out the policy of the City and County; and

(c) train and educate employees regarding sexual harassment issues and policy.

(5) Pursuant to the Charter, the sexual harassment discrimination complaint procedure established by the Civil Service Commission and Human Resources Director is available to review and resolve all allegations of sexual harassment. Persons wishing to file a complaint are urged to contact the Human Resources Department Equal Employment Opportunity Unit for copies of the forms and procedures.

(B) DEFINITION: (1) For purposes of this section and in accord with Federal and State laws, sexual harassment is defined as any unwelcome sexual advance, request for sexual favors and other verbal or physical conduct of a sexual nature when:

(a) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or

(b) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting said individual; or

(c) such conduct has the purpose or effect of unreasonable interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.



(2) Examples of behavior which may, in accord with State and Federal laws, constitute sexual harassment, include, but are not limited to, the following:

(a) Acts from male to female, female to male and between individuals of the same sex which are sexual in nature and unwelcome; sexual harassment may be directed against a particular person, persons or group.

(b) Verbal conduct which is sexual in nature and unwelcome, e.g., epithets, jokes, comments or slurs, repeated requests for dates which are unwelcome.

(c) Nonverbal behavior which is sexual in nature and unwelcome, e.g., staring, leering, lewd gestures.

(d) Physical conduct which is sexual in nature and unwelcome, e.g., assault, sexual advances such as touching, patting or pinching, impeding or blocking movement or any physical interference with normal work or movement;

(e) Visual effects which are sexual in nature and unwelcome, e.g., posters or signs, letters, poems, graffiti, faxes, cartoons or drawings, pictures, calendars, electronic mail and computer programs.

(f) Consensual romantic relationships between a supervisor or manager and a subordinate do not constitute sexual harassment per se and are not prohibited by this policy, but may create a potential for conflict or an appearance of impropriety.

(3) For purposes of this section, retaliation against any official, employee or applicant for employment for having made a good faith complaint or report of sexual harassment, or participating or aiding in an investigation of sexual harassment shall be prohibited. Examples of retaliation may, in accord with state and Federal laws, include, but are not limited to, the following:

(a) transferring the complainant or witness against his or her will;

(b) ignoring the complainant or witness;

(c) spreading rumors and innuendoes about the complainant or witness;

(d) changing work assignments of the complainant or witness without a valid work-related rationale;

(e) sabotaging of tools, materials or work of the complainant or witness;  
and

(f) withholding work-related information from the complainant or witness.

(C) RIGHT TO FILE OTHER COMPLAINTS: This policy shall not alter or affect the right of any person to make a charge of discrimination with any state or federal agency with jurisdiction over such claims, file grievance under a collective bargaining agreement, or consult a private attorney.

(D) EDUCATION AND TRAINING: Prevention is the best tool for the elimination of sexual harassment. All City and County commissions, departments, boards and agencies shall provide to each of their supervisory employees a copy of this ordinance with a written explanation of the most current procedure for filing a complaint. Each appointing officer shall require his or her supervisory personnel to instruct all employees under their supervision of the contents of this ordinance and of the Civil Service and Human Resources Department procedures for filing and processing a complaint. Each appointing officer shall provide to or acquire for its supervisory personnel a periodic training program designed to educate and thereby prevent sexual harassment.

(E) DEPARTMENT OF HUMAN RESOURCES REPORTS: (1) Quarterly Reports: The Human Resources Director shall provide, on a quarterly basis, to the Commission on the Status of Women a written report on the number of sexual harassment complaints filed and the departments that were involved. The report also shall include information on the dispositions of complaints that are concluded and the status of complaints that are pending. The reports shall not include names or other identifying information regarding the parties or the alleged harassers.

(2) Annual Report : The Human Resources Director shall provide annually to the Mayor, the Board of Supervisors, the Human Rights Commission, and the Commission on the Status of Women a written report on the number of claims of sexual harassment filed, including information on the number of claims pending and the departments in which claims have been filed. The reports shall not include names or other identifying information regarding the parties or the alleged harassers.

(F) COMMISSION OF THE STATUS OF WOMEN: The Commission on the Status of Women is available to offer technical advice on this City and County policy, assistance and referrals for sexual harassment complainants, technical assistance and additional resources to supervisory employees and managers regarding sexual harassment and to assist in the prevention of sexual harassment incidents.

(g) The City and County of San Francisco is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, any obligations for which it is liable in money damages or otherwise to any person who claims that such breach proximately caused injury.

# APPENDIX D





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# **Sexual Harassment: Frequently Asked Questions**

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# **Table of Contents**

<b>I. Introduction</b>	1
<b>II. Commonly Asked Questions</b>	2
What is Sexual Harassment?	2
What is prohibited retaliation?	3
Why is sexual harassment such a problem?	4
What is the reality behind the myths?	5
<b>III. NonSupervisory Employees</b>	7
What can I do if I am being sexually harassed?	7
What are my options if I want to file a sexual harassment complaint?	7
What happens if there are no witnesses to claim of sexual harassment?	8
If I file a complaint, everyone at work will know and I don't want to deal with that. What can I do?	8
Can I compliment someone?	9
Can I date someone from work?	9
If I am asked out on a date and I don't want to go, how do I say no without hurting his or her feelings?	10
I'm not sure if he or she really means maybe or if he or she really means no. What am I supposed to do?	10
He or she never told me he or she didn't like my comment (gesture, hug, etc.), why not?	11
He or she just can't take a joke.	11
I am a female and my boss continuously yells at me, is late to meetings, provides no follow through, demands too much work and/or is unreasonable. Is this sexual harassment?	12
Can an individual be sued for sexual harassment	12
<b>VI. Supervisor Section</b>	13
What can I do to prevent sexual harassment in my workplace.	13
What is unprofessional vs. illegal sexual harassment.	14
Why should prevention include putting a stop to unprofessional behavior?	14
How do you stop unprofessional behavior?	14
What should I do to help the complaining employee?	15
What records should I make?	15
What are possible disciplinary actions I can take against the harasser?	16
Can consensual sexual relations between a supervisor and his or her subordinate be considered sexual harassment?	16
What should I do if an employee is being sexually harassed by the public, clients, or vendors	16
Can, or should I protect the privacy of the complainant and/or alleged harasser?	17

How can you change the historic culture in an organizational department that some may think is sexist? .....	17
If your staff is ignoring/shunning someone who has complained, what can you do about it? .....	18
If someone tells you he or she is having a problem with another employee and wants it to be confidential, what should you do? .....	18
Is flirting still allowed? .....	19
I supervise many managers, how can you keep them from turning a blind eye to problems? .....	19



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# 1

## ***Introduction***

THIS IS NOT A LEGAL DOCUMENT AND DOES NOT CONTAIN LEGAL ADVICE. IF YOU NEED LEGAL ADVICE PLEASE CONSULT WITH AN ATTORNEY.

**It should be the policy of all employers to provide a workplace in which all individuals are treated professionally with respect and dignity.** The social and economic costs of sexual harassment are tremendous. Individuals who experience sexual harassment suffer psychologically, physically and emotionally. Managers regularly report that workplace morale is severely and negatively affected and collegiality is also injured when an incident occurs. One lawsuit, even if the employer wins, can cost hundreds of thousands of dollars.

Every employee has the right to work in a safe environment free of discrimination, including sexual harassment. Sexual harassment is prohibited by local ordinance as well as state and federal law. Sexual harassment is unacceptable and should not be tolerated in the workplace. Everyone should recognize that the elimination of sexual harassment in the workplace will create a better work environment, increase productivity, and improve relationships for all employees.

This handbook was written to give practical guidance about what you can do:

- 1) to prevent sexual harassment in your workplace
- 2) to identify sexual harassment
- 3) if you are harassed or witnesses harassment
- 4) to file a complaint
- 5) as a supervisor when confronted with a sexual harassment situation

These questions were originally posed and answered by the City and County of San Francisco Sexual Harassment Task Force. Special help was provided by Hillary Flynn, Barry Chersky, Jody LeWitter, and Margaret Grover. Assistance with the revisions was provided by Esther Leong and administrative support by Diana Smith.

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# 2

## ***Commonly Asked Questions***

The following questions and answers address issues which concern all employees, supervisory and nonsupervisory.

### ***What is Sexual Harassment?***

Sexual Harassment consists of any unwelcome conduct of a sexual nature which:

is severe or pervasive enough to affect the person's work environment (hostile work environment. Courts have defined this to be an atmosphere filled with sexual innuendo, abuse and insults.)

or

is made a condition of employment or promotion (*quid pro quo*). For example, when a supervisor states that a subordinate will not receive a raise unless she/he goes out on a date with him or her;

The determination of whether conduct is sexual harassment depends on the specific facts and context of the situation. On most occasions a hostile environment requires showing a pattern of offensive conduct. However, there are occasions, especially with severe incidents, where a single incident may create a hostile environment. Some things that can be considered in determining whether there is a hostile environment are the frequency or pervasiveness of the conduct, whether the conduct was verbal or physical, whether the conduct was hostile or patently offensive, whether the harasser was a co-worker or supervisor. Note: the conduct can be unwelcome even if the employee does not specifically demand that the conduct stop.

Sexual harassment can occur between coworkers, between workers of the same sex, between the general public or clients and an employee. Sexual harassment may be very subtle and can be in the form of physical, verbal, and/or visual harassment. Examples of behavior which may constitute sexual harassment include but are not limited to:

Acts from male to female, female to male and between or among individuals of the same sex which are sexual in nature and unwelcome. Sexual harassment may be directed against a particular person, persons or group.

Verbal behavior which is sexual in nature and unwelcome, e.g., epithets, jokes, comments or slurs, repeated requests for dates which are unwelcome.

Nonverbal behavior which is sexual in nature and unwelcome, e.g., staring, leering, lewd gestures.

Physical conduct which is sexual in nature and unwelcome, e.g., assaults, sexual advances such as touching, patting, pinching, impeding or blocking, movement or any physical interference with normal work or movement.

Visuals which are sexual in nature and unwelcome, e.g., posters or signs, letters, poems, graffiti, faxes, cartoons or drawings, pictures, calendars, electronic mail, and computer programs.

## ***What is prohibited retaliation?***

Retaliation occurs when someone makes a good faith complaint or report of sexual harassment, or participates or aids in an investigation of sexual harassment and is then treated negatively by his or her employer because of his or her complaint or report.

Reprisal conduct may take the following forms:

- ignoring the victim
- giving a negative performance rating/review
- gossiping about him or her
- giving him or her less desirable work assignments
- sabotage of tools/materials

Even if you have already filed a sexual harassment complaint you also have the right to file a separate complaint for retaliation.



## ***Why is sexual harassment such a problem?***

Sexual harassment is an issue that affects all of us at the workplace when it occurs. Many individuals who experience sexual harassment suffer physically and psychologically from the harassment. Many are forced to quit their jobs or take sick leave to escape from the harassment. Turnover is expensive, as are investigations and lawsuits. Not only is the individual harmed, but all of his or her coworkers are harmed either by the pervasive feeling that one cannot get ahead in the workplace without giving sexual favors or by creating an environment where co-workers are forced to tolerate offensive conduct and their work suffers.

Reported sexual harassment greatly under represents the extent of the difficulty because most individuals are afraid to report the harassment. The very real fear of retaliation or being labeled a troublemaker keeps many individuals from reporting an incident and the fear of offending the harasser, who is either a boss or a colleague, keeps the great majority of both men and women from directly confronting the harasser.

California and federal courts have sent a clear message that sexual harassment should not be tolerated and that employers must take positive steps to prevent sexual harassment from occurring.

At a Conference held by the American Bar Association on Sexual Harassment in October of 1997, the following information was given from a variety of recent studies:

- 49% of the women in the studies simply ignored sexually harassing behavior;
- An average of 45% of women reported that they take steps to avoid the harasser, which can range from easy changes in habits or schedule to strategies that require more sacrifice, like dropping a class or taking a different bus route;
- An average of 28% respondent reported that they talked to the harasser and asked him to stop;
- Very few women who experience sexual harassment make a formal complaint or report. The average is 5% and the highest finding-- from a U.S. study--was only 15%;
- The most consistent finding is that women respond more "assertively" to more severe harassment. Some studies show that individuals who perceived the harassment as less severe were more likely to ignore it while more severe harassment triggered actions to avoid the harasser;
- Women are more likely to confront co-workers rather than supervisors but are

more likely to make a formal complaint if the harasser is a supervisor. However women are also more likely to quit their jobs if the harasser is a supervisor than if a co-worker is the harasser.

## ***What is the reality behind the myths?***

Following is a list of myths and their corresponding realities. Myths about sexual harassment are based on prevailing attitudes and stereotypes about sex, sexuality and other compounding factors such as age, race, sexual orientation and disability. Myths about sexual harassment deny the harmful nature of its conduct. They shift the blame to the victim and obscure the motivation of the harasser, which is to achieve power and control over the person harassed.

MYTH	Sexual harassment is simply an expression of sexual desire.
REALITY	Sexual harassment is an expression of hostility and aggression. It is an abuse of power using sexual behavior as the vehicle, and it is against the law.
MYTH	It's no big deal if a person is harassed; it's all done in "good fun".
REALITY	Sexual harassment is abusive. It is not done in jest or "good fun"; rather, it is done to intimidate and hurt others. All people have a right to be treated professionally with respect, decency, and consideration.
MYTH	There is a profile of a typical harasser.
REALITY	Harassers are found in all types of occupations, at all organizational levels, among businesses, academic and all ethnic and religious groups. Those who sexually harass are not distinguishable from their colleagues who do not harass with respect to gender, age, marital status, rank, job title, occupation, or national origin.
MYTH	Men can't help themselves when they are sexually aroused.
REALITY	Men are capable of and responsible for controlling their behavior and acting professional in workplaces and educational institutions, just as women are.
MYTH	If you ignore sexual harassment, it will stop.
REALITY	Generally, simply ignoring sexual harassment will not stop it. This may be taken as a sign of encouragement or tacit consent. Many report that when they directly tell the harasser to stop, it works.



- MYTH** Some people just interact in a physical way and are accustomed to touching others; nothing is meant by this.
- REALITY** Family and social interactions differ from individual to individual, community to community, and ethnic/racial group to ethnic/racial group. However, unwanted and unwelcome physical gestures such as hugging, pinching, or brushing up against a person's body may be forms of sexual harassment. Everyone should respect an individual's personal space.
- MYTH** People who dress in a sexually attractive manner are asking for sexual comments.
- REALITY** The harasser is always responsible for having committed the harassment regardless of an individual's appearance, behavior, judgement, or previous actions. Professional dress codes, if they exist, should be enforced for both sexes.
- MYTH** Only men can sexually harass women.
- REALITY** Both men and women may be targets or perpetrators of sexual harassment. Many times men may not realize that they are sexually harassed because society has unwritten rules that men are supposed to enjoy conversations, attention or behaviors of a sexual nature. As such, it may be difficult for an individual man to recognize his discomfort in these situations or to vocalize this discomfort. Also, women can harass other women and men can harass other men. It is unwelcome sexual behavior or attention regardless of who is perpetrating, or who is the target of the behavior.
- MYTH** There is nothing that can be done about sexual harassment.
- REALITY** On the contrary, there are many steps that can be taken to prevent sexual harassment, and to respond appropriately when it does occur. Strong policies and effective procedures articulated by the head of an organization or institution that are communicated to and enforced by all employees are critical for prevention.
- MYTH** Women often file false sexual harassment charges.
- REALITY** The facts are that while the vast majority of recipients of sexual harassment are women, most recipients do not report it at all. While the filing of false charges by any individual can happen, it is statistically rare; most women do not file charges in the first place.

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# 3

## ***Nonsupervisory Employees***

The following questions and answers address many concerns primarily experienced by nonsupervisory employees.

### ***What can I do if I am being sexually harassed?***

While each person needs to decide what action plan works best for him or herself, many individuals have found informal action facilitates the fastest resolution with the fewest complications. You can start with telling the person involved to stop the behavior. Try to be as clear as possible. For example, "It makes me uncomfortable when you rub my shoulders, please do not do this." If this does not work, you should consider putting it in writing, and tell the person what conduct you find offensive and what action you will take if it continues. For instance, "I find your sexual jokes offensive. I consider these to be sexual harassment and I will file a complaint if you continue to tell them to me." Date and sign the letter, keep a copy and have a witness watch you give it to the offender.

If none of the above works, tell your supervisor (unless he or she is the offender) or a human resource person in your organization (i.e., file a complaint). Check to see if your organization has a mediation or informal complaint resolution process. Cooperate with any investigation and document all that has happened.

### ***What are my options if I want to file a sexual harassment complaint?***

Your first option should be to complain to your supervisor, another supervisor or human resource personnel. Many employee organizations have a grievance procedure which deals with sexual harassment. Inquire with your union representative for details. Some internal complaint procedures have time lines. Check your organization's policies.

**YOU MAY ALSO COMPLAIN TO (For San Francisco Residents):**

- **CA State Agency**  
**Department of Fair Employment and Housing (DFEH)**  
**30 Van Ness Avenue**  
**San Francisco, CA 94102 (415) 557-2005**  
*Filing deadline: One year from last incident.*
- **Federal Agency**  
**Equal Employment Opportunity Commission (EEOC)**  
**901 Market Street, Suite 500**  
**San Francisco, CA 94103 (415) 356-5100**  
*Filing deadline: 300 days from last incident.*

**For San Francisco City and County Employees, the help line: (415) 557-4900**  
*Filing deadline: 180 days from last incident.*

With any incident of sexual harassment, it is important to document the behavior by noting what happened, where and when it happened, who witnessed it (if anyone), how your physical condition has changed as a result of this behavior (i.e., sleeplessness, crying, weight loss/gain, etc.), and what, if anything, you did about it at the time and thereafter.

***What happens if there are no witnesses to a claim of sexual harassment?***

Even if there are no witnesses, the organization should conduct an investigation and talk to the people involved. In some cases, a finding of harassment may be based solely on the credibility of the complainant's allegation.

***If I file a complaint, everyone at work will know and I don't want to deal with that. What can I do?***

Often employees just want the behavior to stop and do not want to make a big deal about the incident. Typically, the matter is settled informally through discussion, training, or mediation. Privacy of all parties involved is to be maintained to the highest degree possible by investigators, managers, supervisors, and coworkers throughout the entire complaint procedure (no matter what avenue you choose to file with). However, many people who file sexual harassment complaints do experience frustration and anger when knowledge of their complaint procedure is leaked to people in the workplace. This information in the office "rumor mill" creates an unsatisfactory work environment for the



knowledge of their complaint procedure is leaked to people in the workplace. This information in the office "rumor mill" creates an unsatisfactory work environment for the complainant. While you can do your part by not participating in these types of rumors your manager or supervisor can also assist in addressing such issues. For example, it may be possible for your supervisor to intervene and address specific individuals regarding their participation in the rumor mill. If the rumors persist, they may be considered retaliatory and may provide a basis for another complaint to be filed. Also, your individual health provider program may provide support services to individuals. Such as counseling or support groups.

### ***Can I compliment someone?***

Yes, co-workers and supervisors can give compliments to their colleagues in the workplace. Telling someone they look good today or complimenting a new piece of clothing is generally considered fine. It is inappropriate if it is accompanied by a leering stare and/or a whistle, is continually given to only one particular person or is accompanied by a sexualized innuendo or behavior. Any of these may be experienced as sexual harassment. Examples of inappropriate comments which could be considered sexual harassment are:

- "Hey baby, you are sure looking fine today!"
- "Why don't all women look like you?"
- "I love that outfit. It really shows your figure!"
- "Everyone should have muscles like you."

### ***Can I date someone from work?***

Consensual dating at work is permissible. While it is ok to date someone from work, awkward situations can occur. For example, if the relationship fails and you are still forced to work with this person on a daily/regular basis, work-related interactions could become negatively affected by the failed relationship. Work performance could suffer. Frequently, the impact of the failed relationship is felt by other coworkers also, having implications beyond the lives of the two individuals involved.

Consensual dating of a supervisor is also permissible but can be problematic. Such relationships often give the perception (at least) of a conflict of interest and that the supervisor is "playing favorites". To counter this perception, supervisors have been known to overcompensate by giving too much work, for example, to his/her partner thus treating the partner unfairly. Also, employees who have dated their supervisors report

that coworkers tend to discredit the valuable and legitimate goals which an individual has achieved because they simply perceive that success was gained only with the aide of the supervisor's favoritism. Because the implications are great and the potential complexities are many, dating in the workplace should only be done after careful consideration of the potential problems. If you are dating someone you work for or with, you may want to consider requesting a transfer.

### ***If I am asked out on a date and I don't want to go, how do I say no without hurting his or her feelings?***

Giving a clear message of "no" does not have to be rude, disrespectful or mean. Clear and concise communication to coworkers and supervisors about what is and is not acceptable behavior is a key component to stopping sexual harassment from occurring in the workplace.

It is particularly important to send a clear "no" message because unclear or neutral responses can send mixed signals. For example, if you do not want to join someone for a lunch date, say that you are not interested in going out with him or her, rather than saying, "No, not today" or "Maybe some other time." To someone who is "in pursuit" these ambivalent responses could be considered encouragement to try again in the future and are not likely to stop the unwelcome invitations.

Some examples of how to turn down a request for a date are:

- No. I don't date men/women at work.
- I am flattered but not interested in that kind of relationship.

If you are unclear in your communications the following two scenarios may occur.

### ***I'm not sure if he or she really means maybe or if he or she really means no. What am I supposed to do?***

Because many people feel uncomfortable clearly stating what they need or want, often their needs or desires are expressed nonverbally. Being sensitive and perceptive to nonverbal communication can avoid many difficult situations and will provide a workplace which is respectful to all. For example, if you ask a coworker out and she or he does not clearly communicate a definitive yes or no answer, it is important for you to be aware of the nonverbal communication she or he is sending. Nonverbal clues could be:

- continual avoidance of saying "yes"



- moving backwards as you approach
- wringing of hands
- downcast eyes/avoiding eye contact
- shrugging of shoulders

Similarly, if these behaviors are accompanied by verbal communication which is unclear, this may be a good indication that she or he is not interested in dating. Examples of unclear, passive, verbal behavior are words such as: maybe, I guess, I think I'm busy, you know, later, some other time. These passive words may all indicate a desire to say "no" without hurting your feelings.

It is the responsibility of every employee to be sensitive to and aware of the verbal and nonverbal behaviors of his or her coworkers, especially as it pertains to dating in the workplace. The diversity of today's work force and the variety of cultures represented make it necessary to be aware of and attempt to understand all forms of communication.

### ***He or she never told me he or she didn't like my comment (gesture, hug, etc.), why not?***

Often people simply tolerate the offensive behavior, that does not mean that a person welcomes it. There are many reasons why individuals do not speak up against offensive behavior. Many individuals who experience sexual harassment in the workplace are understandably uncomfortable telling someone their behavior is objectionable. Think how often you yourself have told someone that you don't like their comments or attention.

Study after study demonstrates that most individuals resist complaining about sexual harassment. About 40 % of women fear that reporting the situation will make it worse, and that they would be blamed or experience retaliation. About 30% said they did not report harassment because they did not think anything would be done about it or that they would not be believed.

Cultural or ethnic experiences that create traditions of silence and avoidance often dictate how an individual deals with an awkward or undesirable situation. He or she might also fear the risk of being thought of differently, unfriendly, ill-humored or labeled a "bad sport" or a "troublemaker." For many people their desire to be liked and not make waves outweighs their ability to speak out about objectionable behavior.

## ***He or she just can't take a joke.***

Sexual harassment is no joke because it is, by definition, unwelcome attention. Comments that are made at the expense or embarrassment of another are not funny. The culturally acceptable standards of what is offensive and what is just a joke have changed. Many more women are in the workforce in new and different capacities than ever before. Because sexual jokes may have been accepted by some female or male employees in the past doesn't mean that every female or male employee will think they are funny now or in the future. It is quite possible that a sexual joke will be considered humorous to one woman or man and will be offensive and considered sexual harassment to a different woman or man. While not easy, we all need to respond and adapt to these changes. The best avenue is to apologize for your joke and not repeat the behavior.

## ***I am a female and my boss continuously yells at me, is late to meetings, provides no follow through, demands too much work and/or is unreasonable. Is this sexual harassment?***

Not usually. While these are certainly examples of bad management styles which need desperately to be addressed by human resource personnel or your union grievance procedure, they do not constitute sexual harassment unless they are based on your sex or are unwelcome sexual comments or conduct.

## ***Can an individual be sued for sexual harassment?***

Yes. It is not uncommon for people accused of sexual harassment to be sued personally. An individual employee may be held liable for engaging in sexual harassment. An organization may or may not hire an attorney to represent the accused employee.

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# 4

## ***Supervisor Section***

The following questions and answers address many issues which will need to be addressed primarily by supervisors and managers.

### ***What can I do to prevent sexual harassment in my workplace?***

- Set an example-- act in a professional and respectful manner to all employees.
- Monitor the conduct and environment of the workplace; stop unprofessional behavior in subordinates before it ever gets to the level of harassment.
- Encourage good communication and listening skills and team building amongst your staff.
- Read and understand your organization's Sexual Harassment Policy.
- Conduct ongoing education for your employees about what is sexual harassment and make sure that they understand the sexual harassment policy and how to report sexual harassment.
- Encourage comments regarding the work environment, including problems regarding sexual harassment and unprofessional conduct.
- Let your employees know that you will not tolerate sexual harassment at the workplace and demonstrate your commitment to "zero-tolerance" by taking immediate action, when appropriate.
- Post the sexual harassment policy in a prominent place and distribute the policy to all employees and suggest discussing in a staff meeting.
- Be both neutral and objective during an investigation of an incident.
- During the investigation of a complaint and possible subsequent discipline of the harasser, coworkers may feel angry or threatened by the complainant and his or her supporters. Stop rumors and



offensive actions by coworkers immediately if an incident occurs. It is important to demonstrate that this type of activity will not be tolerated.

- If tension between coworkers is a problem, consider having a workshop on team building or communication (not, however, about a particular incident!)

## ***What is unprofessional vs. illegal sexual harassment?***

The legal grounds for committing sexual harassment are quite rigorous. Severe or pervasive unwelcome sexual conduct; hostile environment is an atmosphere that is filled with sexual innuendo, abuse or insults. Is every single sexual joke by itself illegal? Probably not; is it unprofessional? YES. Unprofessional conduct is defined as disrespectful, inconsiderate, or impolite behavior. While not every single off-colored statement is illegal, they are all unprofessional and do not belong in the workplace.

## ***Why should prevention include putting a stop to unprofessional behavior?***

Unprofessional behavior, while legal, leads to many problems including sexual harassment. If unprofessional behavior is ignored or allowed to flourish it can easily get out of hand. While one off colored remark may not meet the legal definition of sexual harassment it is rare that one remark comes alone. If others see that it is tolerated they may well assume that they too can participate in this type of behavior. One remark leads to another and soon the organization is “filled with sexual innuendo, abuse or insults”. The purpose of prevention is to stop the behavior before it reaches this point.

## ***How do you stop unprofessional behavior?***

Most individuals understand what it means to be both professional and respectful (and if they don't should be trained accordingly!). Don't wait until the behavior gets out of hand and a potential complaint is filed. Your job as a supervisor is to prevent harassment from ever happening by being vigilant in maintaining a professional, respectful atmosphere for everyone. It is much easier to say to someone who has just acted unprofessionally to “knock it off”, or “that type of behavior is unprofessional and not acceptable in our organization” than it is to say later, “Your behavior constitutes sexual harassment.” Practice prevention and stop unprofessional behavior from ever rising to the level of sexual harassment or any other type of harassment.

## ***What should I do to help the complaining employee?***

- Acknowledge the complainant's concerns immediately by expressing appreciation for information regarding any problems.
- Explain whatever options the individual may have for formal investigations and reporting, informal handling of the matter and/or mediation and how each of these options works.
- Ask the complainant what would she/he like to see happen. While not making any promises for a specific course of action assure the complainant that his/her complaint will be followed-up on and that there will be no retaliation for giving you the information.
- The complaining employee should be informed of resources such as counseling that may be available to him or her.

Often a complainant will want the matter to be handled confidentially. Explain to him or her that his or her privacy will be respected but do not guarantee complete confidentiality. Investigations require discussions with the alleged harasser and other possible witnesses. Lastly, again reassure the complainant that retaliation of any form against the complainant will not be tolerated and will be subject to discipline.

Follow your organization's procedures for reporting a complaint and cooperate fully with formal investigation. If you are unsure what actions to take check with your human resource personnel for advice. Make whatever inquiries into the situation are necessary to ensure that while the matter is being handled/investigated the parties involved are safe and free from retaliatory behavior. You should periodically check with the complainant to ensure that the harassment has ceased and that no retaliation has ensued.

## ***What records should I make?***

Document, document, document. The importance of this employer's responsibility cannot be overemphasized. You should document, in writing, your conversations with the parties involved in the complaint, keep any evidence of harassment, make this evidence available to investigators, and document what actions you took to resolve the harassment situation, if any. Document what you witnessed, what you did, what you said and who witnessed any conversations or behavior. If you are ever called upon later to defend your actions, it is important that you can show that you took appropriate action. Also,



encourage the complainant to document all incidents of harassment and to make those records available to investigators.

### ***What are possible disciplinary actions I can take against the harasser?***

The spectrum of disciplinary actions ranges from reprimand to permanent dismissal--check your company policy's list. Managers/supervisors should be aware that the implementation of discipline could cause other employees to become angry or resentful. While disciplining someone under these hostile conditions may be difficult, it is absolutely appropriate and necessary. A very clear "zero tolerance" message must be sent to all employees. Eventually all parties will understand that sexual harassment conduct is not permissible.

### ***Can consensual sexual relations between a supervisor and his or her subordinate be considered sexual harassment?***

Yes. While a consensual sexual relationship between a supervisor and a subordinate is not legally prohibited, it will always have consequences, some of which can be considered sexual harassment. (Some companies outright prohibit these types of relationship - check your company policy.) It is important and professional that managers and supervisors maintain high standards of fairness and impartiality in their supervision of employees. These standards may be compromised, or at least the appearance of neutrality will be compromised, if a manager engages in a sexual relationship with a subordinate. It is difficult to give an impartial performance appraisal to someone with whom you are involved with sexually. Moreover, if the relationship between the supervisor and the employee ends (and most do) it may create a hostile environment. For professional reasons, these relationships should be avoided and, if one occurs, both individuals may want to consider the possibility of transfer.

### ***What should I do if an employee is being sexually harassed by the public, clients, or vendors?***

Managers and supervisors are also responsible for ensuring that their employees are not sexually harassed by the public, clients, or vendors. All managers and supervisors should inform their employees that such conduct will not be tolerated and that they should immediately report any sexual harassment from the public, clients, or vendors. It may be

necessary for you to have a conversation with the offender informing him or her that his or her behavior is unacceptable. You may need to:

- ask the alleged harasser to leave the premises
- report his or her behavior to his or her superior and follow-up with that supervisor
- contact security
- follow-up with the harassed employee
- follow your company's policies for reporting a sexual harassment matter

If the harassment is from a customer, you must still take appropriate action within your control to ensure that the offensive behavior stops.

### ***Can, or should I protect the privacy of the complainant and/or alleged harasser?***

You cannot guarantee complete confidentiality. Managers and supervisors should respect the privacy of all parties concerned in a sexual harassment allegation. If you are reviewing a sexual harassment allegation, only involve those persons who can provide relevant information to determine the facts regarding the alleged conduct. Advise persons who must be involved in the review that it is necessary that the privacy of any and all parties be honored. Set an example and put a stop to office rumors, innuendo and accusations.

### ***How can you change the historic culture in an organizational department that some may think is sexist?***

To quote from a famous folksinger, Bob Dylan, "the times they are a-changin'." For years, many job sites were segregated by sex. "The men could be men and the women could be women" is no longer true of our workforce. Women are in every single occupation in greater and greater numbers and, if not there today, will be there tomorrow. This means the rules of the game have changed. What was acceptable ten to twenty years ago is no longer acceptable today. Everyone must act more professionally at the work site, today. That includes construction sites, locker rooms, lunch halls, when traveling, and in the office. Even when advertisers spend billions to make us act and feel sexy, sex at work is unprofessional. This is difficult for some to accept, and while it's understandable why some employees feel this way, it is no longer tolerable.



Set up programs that create a fair and respectful workplace. Examples might include the following:

- A gender focused caucus to review issues as they arise and regularly brainstorm about new ways to improve conditions.
- Review with managers how job assignments are given, what considerations go into each assignment. Look at experience, qualifications, department needs, mentorships, availability, past assignments, and opportunities for growth for each employee.
- Regular trainings for both managers and staff that include gender issues and guidelines for professional behavior.
- Consult with human resources people on increasing team building exercises in regular staff meetings.
- Plan on bringing in outside consultants to help analyze what else can be done.
- Conduct sexual harassment preventions training program
- Conduct diversity training
- Create a mediation program
- Require communication classes
- Create conflict resolution program
- Create outreach & diversity recruitment programs
- Create leadership & mentorship programs (especially any that assist women in traditionally male environments)
- Create internships that include a diverse recruitment.

***If your staff is ignoring/shunning someone who has complained, what can you do about it?***

This could be considered retaliation and be a basis of a second complaint. These situations are always difficult. Call your human resources specialist to help deal with this situation. Shunning and rumors create a very unacceptable work environment. Have the manager involved intervene, with the help of a specialist if necessary, and address the specific individuals regarding their participation in the ignoring/shunning. This needs to be done tactfully so that the privacy of the individuals involved is not violated. Employees need to be told they don't need to be best friends but they do need to work together in a professional and respectful manner.

***If someone tells you he or she is having a problem with another employee and wants it to be confidential, what should you do?***

Sexual harassment problems are like any other problem an employee might bring up. Once an employee has a dilemma, you have a professional obligation to do something

about it. You also have a legal obligation if it involves potential discriminatory harassment. You can not guarantee complete confidentiality to anyone in solving office difficulties, but you can explain to him or her that his or her privacy will be respected to the extent possible. You should tell the employee that only those persons that can provide relevant and pertinent information will be contacted, that each person contacted will be told to honor the privacy of everyone involved and that rumors and innuendos will not be tolerated.

Not every problem necessitates a formal investigation, but every problem needs to be resolved. Communication issues and personality conflicts can often be resolved informally. If, however, you have any doubts about the nature of this employee's problem (i.e. is it sexual harassment or other possible discriminatory behavior?) you would call for expert council from EEO specialists, personnel advisors, human resource specialists, harassment experts, or lawyers, and follow your organizations policy for reporting potential discriminatory behavior.

### ***Is flirting still allowed?***

It is not illegal to flirt at work; the law does not require a sterile work environment with no human interaction. What is expected and necessary in our diverse community is professionalism, respectful behavior, and at times, awareness of how our behavior affects others. A supervisor who flirts with his or her subordinates would not be acting professionally, whether or not his or her attentions were appreciated. This could cause some employees to feel uncomfortable and/or not take this supervisor seriously and that would be problematic.

### ***I supervise many managers, how can you keep them from turning a blind eye to problems?***

To make sure managers are proactive, work with them to set up harassment training programs for their staff and, if need be, counsel them on how to talk to their staff if a problem arises. Be very clear that if managers know of sexual harassment and do not take prompt action, they may be disciplined. Likewise tell them that if they don't know of harassment, *but should have known*, they will be held responsible. Make sure that prevention and prompt action occurs when problems arise by making it part of their performance evaluation **for which they will be judged.**



# CITY AND COUNTY OF SAN FRANCISCO

## SEXUAL HARASSMENT RESOURCES

### For Employees:

- **Department of Human Resources (415) 557-4800**  
Equal Employment Opportunities (DHR-EEO)  
44 Gough St., San Francisco, CA 94102  
**Sexual Harassment Helpline - (415) 557-4900, email: eeohelpline@ci.sf.ca.us**  
*(Information, technical assistance, mediation, investigation)*
- **Commission on the Status of Women (415) 252-2570**  
25 Van Ness, Suite 130, San Francisco, CA 94102  
*(Trouble-shooting, technical assistance, trainings, additional resources)*  
**WEBSITE: <http://www.ci.sf.us.ca/cosw>**
- **Employee Assistance Program (EAP) (415) 554-9580**  
1360 Mission Street, 4th Floor, San Francisco, CA 94103  
*(Confidential counseling/support group services, mediation)*
- Contact individual union regarding confidential counseling services
- Contact your insurance provider for confidential counseling

### For Managers/Supervisors:

- **Department of Human Resources (415) 557-4800**  
Equal Employment Opportunities (DHR-EEO)  
44 Gough St., San Francisco, CA 94102  
**Sexual Harassment Helpline - (415) 557-4900, email: eeohelpline@ci.sf.ca.us**  
*(Technical assistance, investigation, training, mediation)*
- **Department of Human Resources (415) 557-4870**  
**Management & Employee Development**  
44 Gough St., San Francisco, CA 94102  
*(Teambuilding, management and performance appraisal, staff communication, organizational assessments and development)*
- **City Attorney's Office (Labor Section) (415) 554-4283**  
1390 Market Street, 5th floor, San Francisco, CA 94102  
*(Information and assistance re: legal and liability issues)*
- **Commission on the Status of Women (415) 252-2570**  
25 Van Ness, Suite 130, San Francisco, CA 94102  
*(Technical assistance, trainings, additional resources)*  
**WEBSITE: <http://www.ci.sf.us.ca/cosw>**
- **Employee Assistance Program (EAP) (415) 554-9580**  
1360 Mission Street, 4th Floor, San Francisco, CA 94103  
*(Mediation, teambuilding)*
- Your own department's **Human Resources Equal Opportunity and Human Resources Specialist** for with *teambuilding, counseling and mediation, investigation, technical assistance.*

## CITY AND COUNTY OF SAN FRANCISCO

# LOCATIONS/DEADLINES FOR FILING A SEXUAL HARASSMENT COMPLAINT

### *Where to file an INTERNAL complaint:*

- SF City and County: (filing deadline: 180 days from last incident)  
Department of Human Resources (DHR)  
Equal Employment Opportunities  
44 Gough St  
San Francisco, CA 94102  
Sexual Harassment Helpline - (415) 557-4900, email: eeohelpline@ci.sf.ca.us
- Department: (filing deadline: 180 days from last incident)  
Any supervisor (which will forward complaint to Department of Human Resources)
- Union: (filing deadline: varies from 10 days to four months)  
Most employee organizations have a grievance procedure which deals with cases of sexual harassment. Inquire with your union representative for more information.
- Human Rights Commission (filing deadline: varies)  
If you are dealing with a San Francisco City or County contractor or subcontractor.  
25 Van Ness 8th Floor  
San Francisco, CA 94102  
(415) 252-2500

### *Where to file an EXTERNAL Complaint:*

- CA State Agency: Department of Fair Employment and Housing (DFEH)  
30 Van Ness Avenue  
San Francisco, CA 94102  
(415) 557-2005 (filing deadline: 365 days from last incident)
- Federal Agency: Equal Employment Opportunity Commission (EEOC)  
901 Market Street, Suite 500  
San Francisco, CA 94103  
(415) 356-5100 (filing deadline: 300 days from last incident)

Private Attorney: Call your local bar association for a referral; usually you must first participate in an administrative process prior to filing a lawsuit.

The following poster is available from the San Francisco Commission on the Status of Women (415) 252-2570. It is purple and black on 11" x 17" card stock. Two dollars per poster.





# IT'S NO JOKE AND IT IS AGAINST THE LAW



## WHAT IS SEXUAL HARASSMENT?

Sexual Harassment is unwanted sexual attention, or visual, verbal or physical conduct of a sexual nature. Harassment may include leering, comments, touching, or pictures as well as demands or subtle pressure to engage in sexual activity.



## WHAT CAN I DO IF I HAVE BEEN SEXUALLY HARASSED ON THE JOB?

### ■ REACT! DON'T IGNORE IT

Don't overlook offensive conduct of a sexual nature in the hope it will stop. Sexual harassment rarely disappears on its own. Seek help and support.

### ■ SAY NO! BE FIRM AND CLEAR

Let the offender know that the harassment is unwelcome and unacceptable.

### ■ WRITE DOWN EACH INCIDENT

Note the date, time, and place. Find witnesses; others may support your charge. This information will be useful should further action be taken.

### ■ INFORM YOUR SUPERVISOR OR HUMAN RESOURCES

Do not hesitate to make your concerns known. Your employer has the responsibility to make sure that you are not sexually harassed by supervisors, coworkers, clients or customers.

### ■ FILE A FORMAL COMPLAINT

With your supervisor, human resources, union, the California Department of Fair Employment and Housing or the Equal Employment Opportunity Commission.

**YOU HAVE THE RIGHT TO WORK IN AN  
ENVIRONMENT FREE FROM SEXUAL HARASSMENT.**

For further information, contact the  
San Francisco Commission on the Status of Women  
(415) 252-2570.







